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OF

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PREFATORY NOTE.

This paper was prepared when the writer was studying in the School of Political Science of the University of Michigan, and was presented to the Faculty of the Department of Literature, Science, and the Arts of that institution, as a thesis for the degree of Doctor of Philosophy. In collecting material for the paper the writer visited Columbus, Indianapolis, Chicago, Lansing, and Madison, and in no case has information received at second-hand been used where original papers and documents were obtainable. All of the references given in the foot-notes, with a single exception, have been made after a personal examination of the passages referred to, and it is believed that the list of authorities given at the end of the paper embraces every book of importance bearing on the subject.

An abstract of the paper was read by Professor Charles Kendall Adams before the American Historical Association, at its first public meeting, in Saratoga, September 1, 1884.

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PART I.

FEDERAL LEGISLATION.

A.—LEGISLATION AFFECTING THE ENTIRE TERRITORY.

By the treaty of Paris in 1763 the Mississippi River was made the boundary between the British and Spanish possessions in North America. When the United States gained their independence, the same river marked the western limit of their territory. None of the land was public domain. The individual States claimed the entire western country under various and conflicting titles. To the region west of Pennsylvania and north of the Ohio River, Virginia, Connecticut, New York, and Massachusetts asserted their title by virtue of charters, grants, and purchases. Before the war of the Revolution had closed, it was felt by the statesmen of the country that the welfare of the whole people would be promoted if the individual States should cede to Congress this vast unsettled region, to be used as a resource for the payment of the war debt. Congress, in September, 1780, adopted resolutions setting forth the desirability of this step, and invited the States to make the cessions.[1] To remove any hesitation which might arise in giving Congress absolute control over so large a domain, a resolution was adopted a month later, declaring that any territory so ceded should be disposed of for the common benefit of the United States, and should be formed into sovereign republican States, of a given area, on the same footing with the original thirteen.[2]

[1] Document A, 64. (For full titles of documents and books referred to in this paper see the list on page 173.)

[2] *Ibid.*

In response to the invitation, New York, on the first day of March, 1781, relinquished her claims to the western territory. On the second of January in the same year, the Legislature of Virginia submitted to Congress a proposition to cede her western lands on certain conditions. Owing to these conditions the proposal lingered before Congress for many months, awaiting definite action. On the fifth of June, 1783, Colonel Bland, a delegate from Virginia, introduced a motion to accept the cession on the terms offered, and to divide the country into districts of a specified size, each district to become a State as soon as it contained twenty thousand inhabitants. In these districts the Continental soldiers were to receive bounty lands, while Congress was to reserve one tenth of the territory, the income from which was "to be appropriated to the payment of the civil list of the United States, the erecting frontier forts, the founding seminaries of learning, and the surplus (if any) to be appropriated to the building and equipping a navy."[1] This motion was referred to a committee, and never again came up for consideration. It is, however, to be noted as the first proposition made in Congress looking toward an appropriation of public lands for the support of education.

While Congress was theorizing and hesitating over the Virginia cession, a movement was started in New England which, though unsuccessful in its immediate object, rendered great service to the country in hastening the opening of the West. Several months before Colonel Bland's motion was offered, Rufus Putnam and other officers of the New England soldiery had conceived the idea of forming a State, between Lake Erie and the Ohio River, to be settled by army veterans and their families. In April, 1783, Colonel Timothy Pickering outlined a plan for the proposed State, upon the basis of which Putnam drew up a petition to be signed by the officers and submitted to Congress, asking for leave to plant such a colony.[2] In his plan Pickering proposed that, after a certain amount of land had been distributed among the army in payment of services in the war,

[1] *Apud* 1 Bancroft, Appendix, 312. [2] *Apud* 1 Bancroft, Appendix, 314.

"all the surplus lands should be the common property of the State, and disposed of for the common good, as for laying out roads, building bridges, erecting public buildings, establishing schools and academies, defraying the expenses of the government, and other public uses."[1] The petition was forwarded to Congress through General Washington, in a letter to whom, June 16, 1783, urging him to assist in furthering its success, Putnam suggested that the lands should be divided into townships six miles square,[2] with reservations for schools and the ministry.[3] The subject was referred to a committee for consideration, but, though it remained before them many months, it never received favorable action.

Congress was, however, awakened from its lethargy. The energy of the delegates was diverted from talking to acting. In September, 1783, a resolution was passed to accept the Virginia cession with some modification of the terms offered.[4] The Legislature of Virginia assented to the modification, and, on the first day of March, 1784, ceded to "the United States in Congress assembled, for the common benefit of the States," all claim to the territory northwest of the Ohio River.[5] Having thus spent three years in concluding a matter which need not have taken as many months, Congress, without waiting for Massachusetts and Connecticut to give up their claims to portions of the same lands,[6] proceeded to establish its authority over the newly acquired territory.

[1] 1 Pickering, 546.

[2] The first suggestion of townships of this size is found in a report made to Congress in November, 1781.—1 Bancroft, 106.

[3] Walker, 30–36. Washington sent a copy of this letter to Congress with the petition.

[4] Document A, 67.

[5] Poore, 427, 428. By the terms of the deed of cession, enough land was to be reserved from sale by Congress to satisfy bounty warrants promised by Virginia to her soldiers in the late war. The tract subsequently set aside for this purpose was known as the Virginia Military Reservation.

[6] Massachusetts ceded her claims April 19, 1785, and Connecticut, September 13, 1786. The latter retained the ownership of the land between Lake Erie and the forty-first parallel of latitude, and extending westward one hundred and twenty miles from the western boundary of Pennsylvania. This portion of the State of Ohio is known as the Connecticut Western Reserve.

On the same day that saw the Virginia deed of cession delivered to Congress, a plan was reported to that body for the temporary government of the western territory. This plan was the work of Thomas Jefferson. While borrowing some features from the motion offered by Bland in the previous year, it omitted the provision for seminaries of learning. After important amendments, none of which touched upon educational provisions, it was adopted on the twenty-third of April.[1]

Few statesmen of that day valued this territory for the almost unlimited possibilities it afforded for the future greatness of the nation, in the establishment of new states which in wealth and influence and power would soon rival their older sisters. If this thought found place in the minds of any, it was generally subordinated to a far less exalted sentiment. "The western lands were looked upon by all the financiers of this period as an asset to be cashed at once for payment of current expenses of the government and extinguishment of the national debt."[2] This had been the view of Congress in 1780, when it first asked for a cession of the lands, and this view still prevailed.[3]

Some guaranty of protection to settlers had been necessary before they would be willing to purchase lands in what was then the distant western wilderness. Such a guaranty was given by the ordinance for the government of the territory. Other measures were essential to the accomplishment of the main object of Congress,—the sale of the lands. Hitherto settlement in the west had been discouraged and prohibited.[4] Now, however, all through the Atlantic States

[1] 1 Bancroft, 158.

[2] Document A, 196.

[3] A few days after Jefferson's ordinance of government had been adopted, Congress, in urging the remaining States to follow the example of New York and Virginia in giving up their claims to western lands, resolved "that our creditors have a right to expect that funds shall be provided on which they may rely for their indemnification; that Congress still considers vacant territory as an important resource; and that, therefore, the said States be earnestly pressed, by immediate and liberal cessions, to forward these necessary ends and to promote the harmony of the union."—*Ibid.*

[4] *Ibid.*, 63, 196.

men were looking toward this region and waiting for it to be thrown open to purchasers and settlers. Congress saw that the realization of its hopes of financial relief through the disposal of the lands lay in the adoption of liberal terms of sale. Yet they proceeded with the deliberation, or hesitation, which characterized all their doings at this period.

On the seventh of May, 1784, a bill was reported to Congress by Thomas Jefferson "for ascertaining the mode of locating and disposing of lands in the western territory." The ordinance as reported contained complete directions for the survey of the land, and prescribed in detail the method and terms on which sales should be made.[1] The report was made a special order for May tenth, but was not called up until the twenty-eighth, when Congress voted to postpone its consideration indefinitely.[2] Nothing further was heard of it until March fourth, 1785, when it was again reported to Congress unchanged.[3] Copies of this report were sent to a few prominent men outside of Congress who were especially interested in the western country. The evident object of this

[1] Journals of Congress, iv., 416.

[2] *Ibid.*, 419. According to the popular belief of the American people, Jefferson is entitled to the credit of nearly all the wise provisions of the organic law of the western or northwest territory. It is commonly asserted that he was the author of the first provision for a federal land grant for educational purposes in the northwest, and the ordinance referred to above is cited as authority for the assertion. The present Commissioner of Education, Hon. John Eaton, has fallen into the popular current, and in an article in the January, 1884, number of *Education* (p. 293) says: "Mr. Jefferson was chairman of the committee that in May, 1784, made a report on the organization of the western territory, which provided 'that there shall be reserved the central section of every township for the maintenance of public schools, and the section immediately adjoining the same for the maintenance of religion.'"

I shall show further on in this paper that the ordinance as finally adopted did contain a provision for the reservation of school lands, but that it was inserted after Jefferson had left his seat in Congress, and at the suggestion of some one else. In order to leave no chance for error, my friend, Mr. F. H. Hodder, of Washington, examined at my request the original manuscript of Jefferson's report (preserved in MS., "Papers of Old Congress," vol. xxx., 59–65) and found it identical with the report as given in the printed journal, and that it contains no reference to a reservation or grant of lands for educational uses. Like many others, Mr. Eaton has mistaken the draft of the ordinance reported in April, 1785, long after Jefferson had left Congress, for the original report of 1784.

[3] Journals of Congress, iv., 477.

was to obtain their opinion of its acceptability to the people and to intending purchasers. Some of its provisions were criticised, and its omissions noted. Colonel Timothy Pickering, writing under date of March eighth, four days after the report was made, to Rufus King, a member of the committee, noted, among other objections, that there was "no provision made for ministers of the gospel, nor even for schools or academies"; adding, "the latter at least might have been brought into view."[1]

On the sixteenth of March the ordinance was referred to a committee consisting of one member from each State. Among these were Rufus King and William Grayson. On the twelfth or the fourteenth of April the committee reported a new ordinance, bearing the same title as the one drawn by Jefferson. While embodying many of the features of the latter, it contained numerous modifications, changes, and additions. Among others, the following clause had been inserted: "There shall be reserved the central section of every township for the maintenance of public schools, and the section immediately adjoining for the support of religion, the profits arising therefrom in both instances to be applied forever according to the will of the majority of male residents of full age within the same."[2] Rufus King sent a copy of this report to Colonel Pickering, and wrote: "You will find thereby that your ideas have had weight with the committee who reported the ordinance."[3] To Timothy Pickering, then, if to any one man, is to be attributed the suggestion which led to the first educational land grant. The object to be gained by such a clause was discussed by Grayson in a letter to Washington, dated April fifteenth, in which he wrote that "the idea of a township, with the temptation of a support for religion and education, holds

[1] 1 Pickering, 509. This is still another proof that Jefferson's report, which was identical with that of March fourth, did not contain provisions for schools.

[2] MS., "Papers of Old Congress," vol. lvi., 461. It is given with a slight amendment in the printed Journals of Congress, iv., 500. The report is in the handwriting of Grayson. This is the clause which Mr. Eaton erroneously credits to Jefferson.

[3] 1 Pickering, 511.

forth an inducement for neighborhoods of the same religious sentiments to confederate for the purpose of purchasing and settling together."[1] The ordinance was debated in Congress for a month. On the twenty-third of April the whole clause referring to religion was struck out, and on the twentieth of May the ordinance, amended in many particulars, was adopted. The territory was to be divided into townships six miles square, and each township subdivided into tracts one mile square, numbered from one to thirty-six consecutively. The mode and terms of sale were carefully prescribed. The clause relating to a reservation for schools, as amended and condensed by Congress, declared that "there shall be reserved from sale the lot No. 16 of every township for the maintenance of public schools within the said township."[2] This reservation marks the beginning of the policy which, uniformly observed since then, has set aside one thirty-sixth of the land in each new State for the maintenance of common schools.

The idea has become prevalent that this grand endowment is due solely to the zeal of the statesmen of that day in the cause of education; that disinterested generosity was the motive impelling Congress to make the first reservation and establish the precedent to be observed by all future generations of statesmen. While it is easy to misjudge motives, the evidence all tends to show other reasons for the action of Congress in 1785. Jefferson had several years earlier expressed broad and comprehensive views regarding education and the value of public schools.[3] Had the endowment of schools in the western country by Congress been generally considered proper or advisable, he would have been quick to utilize any suggestions of that nature, and to incorporate them in the organic law of the territory. Yet neither of the two ordinances, as drafted by him, referred by a single clause or word to the subject of education. It can-

[1] The letter is given in full in 1 Bancroft, Appendix, 425. In the same letter Grayson maintains that "the great design of the land office is revenue," and that the whole ordinance was framed with that in view.

[2] Journals of Congress, iv., 521; Public Lands, part i., 13.

[3] Morse, 48, 49; 8 Jefferson, 388.

not be urged that the idea had not yet been thought of, for the motion of Colonel Bland and the petition and letter of Putnam, both suggesting a land endowment for schools, had been before Congress for many months.

This negative sort of testimony is supplemented by evidence of a more positive character. Facts already stated in connection with the reservation point directly to the cause of its introduction into the ordinance. The first object of Congress was to sell the lands, in order to meet the obligations of the United States. They were pledged to dispose of them for the common benefit of the States. It is probable that Jefferson, like others, then and since, did not at the outset regard a gift of a portion of the territory for education as fulfilling that pledge. After the introduction of his second ordinance, it became evident that some provision must be made for schools, or few would venture into the wilderness away from civilization. Accordingly, as every interest of the country urged a speedy sale of the public domain, the reservation clause was finally inserted as an inducement to purchasers. Congress unquestionably expected that the value of the remaining lands would be increased, and purchasers more easily obtained.[1] The reservation was a gift from Congress, but was not made with the sole thought of promoting education. Rather was it offered because Congress was in a situation where it needed to sell the property, and its customers suggested this as one of the conditions of purchase.[2] Had any other equally feasible

[1] Chase, 32. Education in Ohio, 13. The same opinion was expressed by a Congressional committee in 1858: "The donation of section sixteen for the support of the township was an inducement to purchasers, and enhanced the value of the adjacent lands, the sale of which indemnified the government for the donation which it made."—Document E, 3. President Pierce in 1854 said: "Such reservations and grants are the acts of a mere landowner disposing of a small share of his property in a way to augment the value of the residue, and in this way to encourage the early occupation of it by the pioneer."—Senate Journal, 33d Cong., 1st Session, 368.

[2] "The sale of the public lands was the principal motive of these grants, and education only a secondary consideration, conducing, in the opinion of Congress, to effect the main purpose."—Extract from a report to the Illinois Legislature in 1823. *Apud* Pillsbury, cxxxix. See also a letter of Governor Woodbridge of Michigan. Shearman, 2.

condition been suggested, it is by no means certain that Congress would, at that time, have made this grand provision for education.

After the adoption of this ordinance, the petition of the New England soldiers, while it had served a good purpose in hastening the laggard steps of Congress, had no prospect of success. Realizing this, Generals Rufus Putnam and Benjamin Tupper issued a call through the newspapers of New England, in response to which a small meeting of citizens was held in Boston on the first day of March, 1786. At this meeting the Ohio company was formed for the purpose of purchasing a large tract of land on the Ohio River, and settling it with soldiers of the late war. During the year one fourth of the stock of the company was subscribed. In March, 1787, the stockholders elected Samuel Holden Parsons, Manasseh Cutler, and Rufus Putnam directors, with full power to negotiate with Congress for the purchase of the desired lands.[1] Parsons drew up a memorial in which he set forth the desires and proposals of the company. The paper was presented to Congress in May, and was immediately referred to a special committee.

On the fifth of July Dr. Cutler reached New York, where Congress was sitting. He immediately began in an energetic way to push the interests of the company. The proposition to plant a colony gave new importance to a subject which had engaged the attention of Congress at various times for more than a year.[2] The government provided for the western territory in 1784 had been designed as a mere temporary arrangement. Plans for its permanent organization had been presented in 1786. Discouraged by the slowness of the land sales and the slight tide of emigration to the west, Congress had not entered with zeal into the discussion of the bill. Now, however, animated by the prospect of a large sale, if a satisfactory form of government should be provided, Congress speedily took up the measure and referred it to a new committee. The committee bent themselves to their work and in two days reported back a new

[1] Hildreth, 193–199. [2] 2 Bancroft, 111, 112.

bill differing in many particulars from the plan referred to them.[1] It contained several new and vital provisions, among them a clause concerning education. Two days later, on the thirteenth of July, the measure became the famous ordinance of 1787 for the government of the "Northwest Territory."[2] After outlining the form of government, the ordinance contained six articles of compact, irrevocable except with the consent of the original States and the people of the States to be formed from the territory. The third of these articles declared that "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."[3] By this clause was the Congress of the United States pledged to make future provision for education, of which all succeeding generations should derive the benefit.[4] During these same days the proposals of the Ohio company to purchase lands were receiving careful consideration. In view of the financial straits of the United States, the successful conclusion of the negotiations was of vital importance to Congress. The committee to whom the matter was referred, after several conferences with Dr. Cutler, presented a report on the tenth of July recommending the sale on the terms demanded by the company. In accordance with those demands one lot in each township was to be reserved for the support of common schools, another lot for the support of

[1] For the bill as it went to the committee, see 5 *West. Law Jour.*, 534, or 122 *N. A. Review*, 242.

[2] This territory embraced the present States of Ohio, Indiana, Illinois, Michigan, and Wisconsin, and the portion of Minnesota lying east of the Mississippi River.

[3] Poore, 429.

[4] That the introduction of this and other features into the ordinance was due to Dr. Cutler, has been asserted with considerable force. Congress was anxious to provide an ordinance satisfactory to the company that offered to purchase so large a tract of land, and Dr. Cutler was invited to favor the committee with his views. It is certain that he proposed several amendments. His journal tells us that all his suggestions with one exception were embodied in the ordidance.—Walker, 56, 57; 53 *N. A. Review*, 336, 337. In the absence of direct proof there is much evidence tending to show that this clause was one of those suggested by him. The whole subject is ably discussed by W. F. Poole in the *N. A. Review* for April, 1876.

the ministry, and four townships for the establishment of a university.[1]

Though anxious to conclude the sale Congress regarded these reservations as too liberal, and in an ordinance, framed July nineteenth, stating the conditions of a contract, the only reservation made was lot number sixteen for schools, as provided in the general ordinance of 1785.[2] This was unsatisfactory to Dr. Cutler, and two days later another series of proposals was submitted by him, setting forth the only conditions on which the company would purchase the lands. Among these conditions it was specified that "lot No. 16 be given perpetually, by Congress, to the maintenance of schools, and lot No. 29 to the purposes of religion in the said townships. Two townships near the centre and of good land to be also given by Congress for the support of a literary institution, to be applied to the intended object by the legislature of the state."[3] These demands met with opposition in Congress, but the pressure of debts, the need for money, and the threat by Dr. Cutler to purchase lands elsewhere from some individual State, prevented a second rejection of the conditions. On the twenty-third of July an ordinance was passed,[4] which, with a few modifications made four days later on the further demand of Cutler,[5] authorized the Board of Treasury to contract for the sale of the land on the precise terms and with the exact reservations demanded by the company. This ordinance, and the subsequent contract by virtue of it, secured to the State of Ohio two townships for the perpetual support of a university. The same play of forces which brought about the school reservation in 1785 compelled the grant for a university in 1787. The latter was fairly wrung from the hands of an unwilling Congress. There was no display of zeal for education in the feeble body at New York which wielded the legislative authority of the United States. The persistency of Dr. Cutler, coupled with the dire necessity

[1] 2 Bancroft, 111.

[2] 122 *N. A. Review*, 262; Walker, 58; 53 *N. A. Review*, 337.

[3] *Apud* 2 Bancroft, Appendix, 433.

[4] 1 U. S. Laws (B. & D's Ed.), 573.

[5] Journals of Congress, iv., Appendix, 17.

of the government, was the force which won the day for the Ohio company and for higher education. To him and his fellow-directors belongs the honor of obtaining, with much labor, this first gift for a university.[1]

In the same year John Cleves Symmes contracted with the Board of Treasury for a large tract in the territory. Similar reservations were made for schools and the ministry, with one entire township for a seminary of learning. These two contracts, containing the gift of three townships for higher education, as well as the only appropriations ever made by Congress for the support of religion, completed the land legislation of the Congress of the Confederation. All other sales of public lands in the Northwest Territory have been made under the general land ordinance of 1785 and its successors.

After the adoption of the Constitution, a general law for the sale of public lands in the Northwest Territory[2] reserved from sale "for the future disposal of the United States," four sections at the centre of each township. Section sixteen was one of these four.[3] In 1804 Congress established three land districts (Vincennes, Kaskaskia, and Detroit) in the Territory of Indiana.[4] Following the precedent established by the ordinance of 1785, section number sixteen in each township was set aside for the use of schools within the same. In addition to that, one township in each land district was reserved for the use of a seminary of learning, and all salt springs with contiguous lands "for the future disposal" of Congress.[5] Indiana, Illinois, and Michigan

[1] 122 *N. A. Review*, 263.

[2] 1 U. S. Stat., 464.

[3] The title to the lands "reserved from sale" by the general laws thus far mentioned, still remained in Congress. When the provision was first adopted in 1785 it is not probable that the precise mode in which the lands should eventually be utilized had been decided upon. The policy was soon adopted of holding them until a State was formed, to which the school sections were given in trust. The university lands in the Ohio company contract and the seminary township in the Symmes purchase were, however, "to be used by the Legislature of the State when established."

[4] After Ohio became a State in 1802, the remainder of the Northwest Territory was known as the Territory of Indiana.

[5] 2 U. S. Stat., 277.

each subsequently received one of the seminary townships.

Owing to errors in running the surveys, and to the irregular course of the rivers which constituted the boundary lines of the new States, many fractional townships were formed. The early laws made no reservations for schools in such cases, but in 1826 a proportional amount of land was granted for that purpose to each fractional township.[1] Under the preëmption laws section sixteen in many townships was preëmpted by settlers and inadvertently sold by the United States. A law was enacted in 1859 granting other lands for schools in such cases.[2] The law also extended to cases where section sixteen was fractional or wanting "from any natural cause whatever." Under these laws each of the five States has received from the public domain for the support of schools an amount of land equal to a full thirty-sixth of its area. Thus has the government fulfilled, to the letter, the promise implied in the ordinance of 1785, to devote one thirty-sixth of the land for the primary education of all subsequent generations.

During the early years of the present century attempts were made by most of the original States to obtain land grants for their schools. They deemed it unjust that only the new States should be thus assisted by Congress. For various sound reasons not pertinent here, Congress declined to make such grants. While refusing to donate the lands themselves for educational purposes, many looked favorably upon a project to give to all the States, old and new, a certain per cent. of the proceeds of the sales of public lands.[3] This project was urged at several sessions of Congress. In 1825 it received the careful consideration of the Committee on Public Lands. The result of their investigations was embodied in an exhaustive report which discussed the question in all its phases. While they did not claim for Congress the right to use the proceeds of taxes, excises, etc., for the promotion of education, they considered such an appropriation of the moneys derived from public lands as constitu-

[1] 4 U. S. Stat., 179. [2] 11 U. S. Stat., 385.
[3] State Papers, 3 Public Lands, 496.

tional, proper, and wise from the standpoint of the government, and as certain to promote the general welfare of the people.[1] While the proposition never obtained the approval of Congress, the report is remarkable for its broad view of the relations of the national government to the education of the people. A later generation has advanced one step further in claiming that any national revenues may be used in this cause, but no later advocate of a broad construction of the powers of Congress over education has adduced a single valid argument which was not put forth in this report in 1825.

The policy of setting aside a certain section in each township for schools, regardless of the character of the land, gave rise to some inequalities in the endowment of the townships. In many instances the section fell upon poor or worthless land which could contribute little toward supplying school facilities. So long as each township derived its sole government support for learning from its own reserved section, the quality of the land was an important element in determining the character of the schools in the township. Many attempts were made to induce Congress to allow townships having an inferior section to exchange it for better land. Congress in considering the first of these petitions wisely declined to take a step which would have resulted in endless confusion, and have given rise to incessant demands for exchange, and opportunities for fraud.[2] This policy has been departed from on one or two occasions, but only for a single township in each instance.[3] In the States admitted since 1836 the proceeds of all sales of school lands have been consolidated into one fund, and the income distributed *pro rata* over the whole State. In this way the inequalities produced in the older States have been avoided, and all the people derive equal benefit from the grant.

About the year 1840 the States of Arkansas and Missouri memorialized Congress on the subject of draining and reclaiming a large tract of swamp lands lying along their common border. They represented that if Congress should

[1] State Papers, 4 Public Lands, 750. [2] 4 Cong. Debates, 479.
[3] Illinois School Reports, 1881–82, cxxxi.

not deem it proper to enter upon such work itself, they would undertake and complete the task provided the land in question was given to them as a partial compensation for the expense involved. For some time these memorials, renewed annually, obtained no response from Congress. At length, in 1847, the Commissioner of the General Land Office suggested that "such swamp and other lands as are from local causes unfit for settlement and cultivation in their present condition" be granted by Congress to the States in which they lie, "in order that such portions of them as may be reclaimed may be made productive and available to such States for purposes of education, internal improvement, and such other public uses as those States may deem best calculated to advance their own peculiar interests."[1] In 1848 the usual petitions of Arkansas and Missouri were referred to a select committee who reported a bill making a grant to those States.[2] This, however, failed to become a law. In the next Congress a bill was introduced which proposed to grant to the State of Arkansas, "to enable her to construct the necessary levees and drains," all the unsold swamp and overflowed lands in the State "made unfit thereby for cultivation." It was supposed that the sale of the lands when drained would in a great measure reimburse the State for the expenses of reclaiming them. In the committee to whom the bill was referred, its provisions and benefits were extended, "to each of the other States of the Union in which such swamp and overflowed lands may be situated."[3] With this broad extension it was passed in 1850.[4] The act required that "all legal subdivisions, the greater portion of which is 'wet and unfit for cultivation,' should be included" in the grants to the States, the only requirement in return being that the proceeds in any way de-

[1] Document B, 32.

[2] The reasons adduced by the committee were that the work was needed, that Congress would not and could not do it, and that from a mere pecuniary standpoint the United States would lose nothing, for the neighboring lands, then undesirable, would by the improvement be greatly increased in value.—Document C.

[3] 21 Globe, 232.

[4] 9 U. S. Stat., 519.

rived from them should be used, "as far as necessary," in reclaiming the lands. By this almost unexpected act the several States of the Northwest Territory received a valuable gift.[1] In these States much of the so-called swamp land, granted by the broad terms of the act, required little drainage, and a still greater amount, owing to the nature of the land, could be reclaimed at slight expense. These facts made it evident that a large sum above the cost of drainage would be derived from their sale. The law laid no restrictions upon the disposition of such a surplus, and several of the States, acting upon the suggestion of the Land Commissioner,[2] soon enacted that the whole or a portion of the net proceeds of the lands should be devoted to the support of common schools. Thus, though Congress gave no evidence of an intention to increase the endowment of education when granting the swamp lands,[3] the subsequent action of the States themselves brings the consideration of the management and disposition of the lands within the scope of this paper.

While Congress was engaged with the swamp-land bill, the establishment of schools or colleges whose special object should be to afford instruction in methods of agriculture and all kindred subjects, was beginning to attract attention in some of the Western States. The possible benefits of such schools were seen and urged by prominent agriculturists. Soon the Legislatures of the States became interested in the matter. The people remembered the great impulse and valuable assistance given by Congress to the cause of common-school and academical instruction, and it was not long before the idea of obtaining land grants for the endowment

[1] Prior to June 30, 1880, Ohio had received under this law 25,640 acres; Indiana, 1,257,588 acres; Illinois, 1,454,283 acres; Michigan, 5,659,217 acres; Wisconsin, 3,071,459 acres.—Document A, 222.

[2] *Supra*, 21.

[3] The possibility of a surplus revenue accruing to the States was known to the committee who reported the bill to Congress in 1850. In their report they quoted with approval the suggestion of the Land Commissioner regarding the use which the States might make of the proceeds of the lands.—Document D, 3. In the debates in Congress the question of a surplus, or its disposition, seems not to have been brought forward.

of these proposed agricultural schools presented itself as a proper and easy method of supporting them. In 1850 the Legislature of Michigan asked Congress for a grant of 350,000 acres of land for the establishment and maintenance of agricultural schools within the State.[1] Congress took no action upon the petition.

During the next few years the general interest in the subject increased. At every session of Congress memorials, resolutions, and petitions were received from individuals, from Boards of Agriculture, from Farmers' Conventions, and from State Legislatures asking for the national endowment of agricultural schools in each of the States. For several years these memorials received no attention, and there was an evident disinclination, even on the part of those members of the National Legislature who were friendly to the project, to urge its consideration. The reason for this is not far to seek. In 1854 President Pierce had vetoed a bill granting a large amount of land to the States for the establishment of asylums for the care of the indigent insane. The reasons given for the veto were that the care of the insane was a State matter, and that a grant of lands for such a purpose was unconstitutional.[2] Passages in the veto message made it certain that the President would also veto any measure which might come before him for the appropriation of lands for educational purposes. The friends of the project, therefore, allowed it to slumber during his administration.

In 1857 James Buchanan became President, and in the first session after his inauguration a bill was introduced in the House of Representatives[3] to grant to each State in the Union, for the maintenance of agricultural schools, a quantity of land equal to twenty thousand acres for each senator and representative in Congress to which the State was entitled. In any State where there were public lands, the lands granted to that State were to be selected therefrom; to every State in which the public lands did not equal the proposed grant, land scrip was to be issued to make up the deficiency. This

[1] Mich. Laws, 1850, 462. [2] Senate Jour., 33d Cong., 1st Session, 363–369.
[3] Globe, 35th Cong., 1st Session, 32.

the State must sell, not being permitted, for reasons of State policy, to locate the scrip upon lands in any other State.[1] The bill further required that the proceeds of the land or scrip should be invested in "safe stocks," yielding at least five per cent. interest; that no part should be used for buildings, and that only the income of the fund should be used by the schools or colleges for any purpose. Finally, any State to obtain the benefit of this grant must establish within five years at least one college "where the leading object should be, without excluding other scientific and classical studies, to teach such branches of learning as are related to agriculture and the mechanic arts."[2]

The members of the committee to whom the bill was referred did not agree in their opinions. The majority held that the bill was unwise and unconstitutional, and that "without a promise of pecuniary compensation Congress has no power to grant portions of the public domain; and if it had, no policy could be more unwise than to grant it for the support of local institutions within the States."[3] The minority favored the bill, arguing that the proposed grant was desirable and constitutional, since Congress had full power to dispose of the public domain as seemed wise to her.[4]

The reports thus disagreed concerning both the advisability and constitutionality of the measure. The struggle, begun in the committee, was renewed in Congress. In the long and hotly contested debate which ensued, it was urged, on the one side, that the object of the bill was good; that the interests of agriculture deserved and needed encouragement; that these interests formed a proper object of Congressional care;[5] that Congress had already made numerous

[1] The assignees and purchasers of the scrip could of course locate it upon any public lands in the United States.

[2] *Ibid.*, 1697.

[3] Document E, 1–5. The ground taken in the report was precisely that occupied by President Pierce in the veto message of 1854, and the line of argument in the two was identical. Mr. Cobb, the chairman, acknowledged that his own views were based upon the arguments of that message, and that previously he had held a different theory of the powers of Congress over the public lands.—Globe, 35th Cong., 1st Session, 1742.

[4] Document E, 6–14.

[5] Globe, 35th Cong., 1st Session, 1741.

grants for school and higher educational institutions; and that the Constitution gave the United States authority to make this and similar donations, since it armed Congress with power "to dispose of and make all needful regulations concerning the territory belonging to the United States." [1]

The opponents of the measure were nearly all from the Southern States. They were actuated by little hostility to agricultural and technical education, but few of them denying that the proposed colleges would be a benefit to the nation. Their opposition emanated from the ultra State-sovereignty spirit then prevalent in the south, and was based almost solely on constitutional grounds. They claimed that the bill attempted "to establish a new theory in the disposition of public lands and the relations of the government towards the States"; [2] that "it was just as much a violation of the duty of Congress to invade the province of the State governments under the head of donations as it would be to invade it by force and violence"; [3] that while Congress had power to dispose of the public lands for a consideration, it could not give them away [4] "without violating the beneficiaries' rights." [5]

In the face of so many precedents in favor of the grant, the objection on constitutional grounds lacked force, and the question in the minds of a large majority of Congress was entirely one of expediency. The bill passed Congress in February, 1859,[6] with slight amendments. The most important of these was that the distribution of the lands should be on the basis of the apportionment to be made in 1860. President Buchanan refused his assent to the bill. Basing his veto on the arguments used in Congress by its opponents, he held that it was unconstitutional, and that it

[1] *Ibid.;* also Globe, 35th Cong., 2d Session, 721. See Constitution, Article iv., Sec. 3.

[2] *Ibid.*, 187. [3] *Ibid.*, 715. [4] Globe, 35th Cong., 1st Session, 1741.

[5] Mr. Bayard covered the whole constitutional ground of the opposition when he stated that the bill was "in violation of the Constitution under a general grant of the power of disposing of the public lands by appropriating them for purposes not within the jurisdiction of Congress."—Globe, 35th Congress, 2d Session, 785.

[6] Senate Journal, 35th Cong., 2d Session, 278; House Journal, 428.

proposed an impolitic and unwise intermingling of state and national instrumentalities.[1] The friends of the measure were unable to pass it over the veto.

Petitions and memorials in favor of the grant poured in upon the next Congress in great numbers, and the project was again brought forward. The certainty that it would be vetoed, and the fact that the attention of Congress was drawn toward the impending troubles in the south, prevented its consideration. In the Thirty-seventh Congress a bill was introduced which was essentially a copy of the original measure of 1857, except that it granted 30,000 acres instead of 20,000, for each member of Congress. The debates which ensued developed no new features. Little opposition was offered on any grounds. Its opponents of 1858 were largely engaged in 1862 in battling on other than Congressional fields. The bill was passed, and was approved by President Lincoln on the second of July, 1863.[2] Its general provisions have already been stated.[3] By one clause no State while in rebellion was to receive the benefit of the act, but since 1865 all the Southern States have availed themselves of its provisions. Every State in the Union has established a college and received its quota of land or scrip.[4]

This grant is the last donation made by Congress for educational purposes. Various unsuccessful attempts have since been made to increase the grant made in 1863. Several petitions for an increased endowment of the common schools have also been laid before Congress. In 1872, the House of Representatives passed a bill granting to the States and Territories the net proceeds "arising from the sale, entry, location, or other disposition" of the public lands of the United States, "for the maintenance of common schools for the free education of all the children in the United States."[5] This comprehensive measure which would have devoted the whole public domain to educational purposes, contained many objectionable features. The method of distribution provided

[1] House Journal, 35th Cong., 2d Session, 501–508. [2] 12 U. S. Stat., 503.
[3] *Supra*, 23. [4] Document A, 230.
[5] House Journal, 42d Cong., 2d Session, 293, 294, 308.

in the bill tended to centralize in the national government a species of control over education, which is repugnant to the true spirit of State independence in domestic affairs. The Senate did not pass the measure.

The recent propositions to aid the States in educational matters by an appropriation of money, are based upon the same theory, and are open to the same criticisms as the bill of 1872. Inasmuch as they do not propose an appropriation of lands or their proceeds, the history of these measures lies outside the field covered in this sketch.

B.—LEGISLATION AFFECTING INDIVIDUAL STATES.

The school and seminary lands, reserved from sale by the general laws, remained under the control of Congress during the existence of the territorial government in the northwest. Whenever a State was carved out of the territory and admitted into the Union, the control over the educational reservations was transferred to the new State. This control was not absolute, however, but was limited by various conditions and restrictions, which were not the same in all cases. Subsequent laws pertaining to educational lands in individual States have also been adopted by Congress. Finally, special grants have been made to various educational institutions in the northwest. This special legislation naturally separates itself into five groups, corresponding to the five States formed from the original territory.

(*a*) OHIO.

By the ordinance of 1787 provision was made for the eventual division of the Northwest Territory into not more than five States, each of which should be eligible to admission into the Union when it should have attained a population of sixty thousand. In 1802, the eastern division of the territory applied for admission. In April of that year a law was passed to enable the people to form a constitution and State government.[1] By one section of the act several con-

[1] 2 U. S. Stat., 173.

ditional propositions were submitted for the acceptance or rejection of the convention which should be called to frame a State constitution. These propositions and the attendant conditions were:

"*First.* That the section number sixteen in every township * * * shall be granted to the people of such township for the use of schools.

"*Second.* That * * * [certain] salt-springs, with the sections of land which include the same, shall be granted to the said State for the use of the people thereof, * * * *Provided*, That the Legislature shall never sell nor lease the same for a longer period than ten years.

"*Third.* [One twentieth of the net proceeds of the sales of public lands in the State, granted for building roads.]

"*Provided always*, That the three foregoing propositions are on the condition, that the convention of the said State shall provide by ordinance, irrevocable without the consent of the United States, that every tract of land sold by Congress, from and after the thirtieth day of June next, shall be exempt from any tax laid by order or under authority of the State, * * * for the term of five years from and after the sale."

The compact in the ordinance of 1787 had provided that the States to be formed from the territory should never interfere with the primary disposal of the soil, and should levy no tax on the property of the United States.[1] In 1802 the government was selling public lands on five years' credit, and the patent was not issued until the final payment was made.[2] The Secretary of the Treasury held that under the ordinance of 1787 the lands could not be taxed until the patent issued, because till that time they were the property of the United States.[3] The conditions contained in the

[1] "The Legislatures of those districts or new States shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona-fide* purchasers. *No tax shall be imposed on lands the property of the United States.*"—Ordinance, Art. v.; Poore, 432.

[2] 2 U. S. Stat., 73.

[3] "An attempt on the part of the Legislature of the territory or new State to

propositions of Congress in 1802 were therefore but a more explicit statement of certain agreements of the ordinance of 1787, which were already obligatory upon the whole territory, and irrevocable without the consent of the United States.[1] Had the condition been omitted from the law of 1802, the State of Ohio would not have been able to tax the lands one moment sooner, so long as the existing system of selling the lands was continued.

But why did Congress impose such a condition in 1802, if nothing new was gained thereby? Why was it made to appear that these grants were offered in return for a concession, by the State, of privileges which, in reality, it had never possessed? Why was the law so framed as to conceal the munificence of the United States, and make the whole affair appear a mere bargain? The history of the measure in its various stages in Congress affords an answer, and throws a clear light upon the origin of this so-called contract, which was misinterpreted by a later generation of legislators and presidents, searching for constitutional arguments against the power to grant lands for any object "without a compensation therefor."[2]

In the committee of Congress to whom the duty of drafting a bill for the admission of Ohio was referred, there was manifested a desire to shield the public lands from all possible encroachments by the new State, and to offer to immigrants still stronger attractions than already existed. It occurred or was suggested to this committee that the exemption of these lands from State taxation for some years after the first purchaser had acquired the title to them would be one of the strongest possible inducements. It was conceded, however, that the United States could not, without the consent of the State, impose other limitations on the latter's power

render lands, sold under the laws of Congress, but for which no patent has yet issued, liable to be sold for non-payment of taxes, would interfere with the regulations adopted by Congress for the 'primary disposal of the soil.' . . . The district or State Legislature has not a right to tax, or at least to sell for non-payment of taxes, the lands on which, though conditionally sold, the United States still retains a lien."—State Papers, 1 Miscellaneous, 327.

[1] Campbell, 451. [2] *Supra*, 24, 25.

of taxation than those made in the ordinance of 1787.[1] In this dilemma the Secretary of the Treasury, Mr. Gallatin, suggested that certain grants be offered as an inducement to the State to make the desired concession regarding taxation.[2] Acting on his suggestion the committee, in its draft of the resolutions or bill, proposed that the three grants be offered to the State, on condition that "every and each tract of land should be exempt from taxation for the period of *ten years from and after the completion of the payment of the purchase money* on such tract to the United States."[3]

This condition and exemption was far broader than that made in 1787. It would have relieved the land from taxation for fifteen years after its sale and ten years after the government had ceased to have any title in the property sold. When the bill came before Congress for final consideration, it was so amended as to make this clause[4] simply a repetition, in more definite terms, of the existing restrictions. At the same time the form of the contract was retained,

[1] In a letter to the chairman of the committee, Mr. Gallatin says: "It does not appear to me that the United States have a right to annex new conditions, not implied in the articles of compact, limiting the legislative right of taxation of the territory or new State. Indeed, the United States have no greater right to annex new limitations than the individual State may have to infringe those of the original compact." Annals, 7th Cong., 1st Session, 1100, 1101. State Papers, 1 Miscellaneous, 327.

[2] "If it be in a high degree, as I believe it is, the interest of the United States to obtain some further security against an injurious sale, under Territorial or State laws, of lands sold by them to individuals; justice not less than policy requires that it should be obtained by common consent, and as it is not to be expected that the new State Legislature should assent to any alterations in their system of taxation which may affect the revenues of the State, unless an equivalent is offered which it may be their interest to accept, I would submit the propriety of inserting in the act of admission a clause or clauses to that effect, leaving it altogether optional in the State convention or Legislature to accept or reject the same. The equivalent to be offered must be such as shall * * * be fully acceptable to the State, and at the same time prove generally beneficial either in a political or commercial view to the Union at large." He then suggests the propositions in the form in which they were subsequently reported to Congress by the committee.—*Ibid.*

[3] State Papers, 1 Miscellaneous, 326.

[4] *Supra*, 28 and Note 1.

though by the amendment it was made valueless, and all necessity for its retention removed. Had the terms proposed in the original bill been adopted by Congress and accepted by the State, the contract would have involved a new and valuable consideration on each side. As it stands, only by ignoring the ordinance of 1787 can it be said that the grants of 1802 were made "only upon conditions which more than indemnified the United States."[1]

When the constitutional convention of Ohio came to consider these propositions, several objections were offered to them. As already stated, the lands in the Connecticut Reserve and the Virginia Military Reservation were on a different basis of proprietorship from the other land in the territory.[2] The laws reserving the sixteenth section for school purposes had not applied to these tracts, nor did the grant now proposed extend to them. The Indians also possessed many lands in the State, and no provision had been made for a grant for schools in such tracts, when the United States should have extinguished the Indian claims. These points did not escape the notice of the convention.

The propositions were finally accepted on condition that Congress should make provision for schools in the Connecticut Reserve, the Virginia Military Reservation, and the United States Military District,[3] by granting an amount of land equal to one thirty-sixth of the territory of these districts; that a like proportion should be granted of any lands in the State subsequently acquired from the Indians; that these lands and those already offered by Congress should be vested *in the State* for the use of the schools in each township or district, and, lastly, that Congress should grant one town-

[1] This view is further substantiated by the fact that after the abandonment of credit sales by the government, all States upon admission to the Union, while receiving similar grants, were permitted to tax public lands as soon as they were sold.—Pillsbury, cxxii. Further still, in 1847, the States which, upon their admission, had agreed to the five years' exemption, were permitted thereafter to tax lands immediately after the sale.—9 U. S. Stat., 118.

[2] *Supra*, 9, Notes 5 and 6.

[3] This was a large tract appropriated by Congress in 1796 to satisfy land bounties granted by the United States to soldiers of the army of the Revolution.—1 U. S. Stat., 490.

ship for a seminary in lieu of the one mentioned in the contract with Symmes, which, for some reason, had never been set apart.[1]

When this decision was made known to Congress, the committee appointed to consider the demands, ignoring all questions of indemnity and contracts, took its stand on the broad principle that the reservation of one thirty-sixth of the lands for the use of schools, as established by the ordinance of 1785, was equally liberal and wise; that to this principle it was "a sound policy to adhere and to extend it wherever practicable."[2] The views of Congress agreed with those of the committee, and the desired appropriations were made from public lands in the State.[3]

In the discussion of this measure the right to appropriate lands for educational purposes in the States was called in question for the first time in Congressional debates. Those who denied the right called attention to the fact that, by the terms of the Virginia cession, the public domain must be disposed of for the common benefit of the States. They asserted that to donate to one State a portion of the lands was to benefit the people in one part of the country at the ex-

[1] State Papers, 1 Miscellaneous, 343. 21 Ohio Laws, 44.

[2] The following is from the report of the committee: "The ordinance passed by Congress on the 20th day of May, 1785, established the principle of reserving one thirty-sixth part of the lands sold for the use of schools. To this principle, equally liberal and wise, your committee believe it a sound policy to adhere and to extend it wherever practicable. They are aware of the objection that the right of soil in the tract of country commonly called the Connecticut Reserve, having been ceded by Congress without any valuable consideration, and no reservation having been made for the support of schools therein, the inhabitants of that portion of the State of Ohio have not equal claims on the bounty of Congress with those who, having purchased their lands of the United States, have contributed large sums to the public treasury. * * * But when it is considered that the provision for schools embraces not the emolument of individuals, but the interests of morality and learning, the committee are of opinion that Congress will perceive the propriety of acceding to a proposition, the tendency of which is to cherish and confirm our present happy political institutions and habits. This last consideration applies equally to the United States military tract, to the military reservation of Virginia, and to lands which may hereafter be acquired from the Indian tribes."—State Papers, 1 Miscellaneous, 340, 341.

[3] 2 U. S. Stat., 225.

pense of the rest; hence it was plainly an act of usurpation, in violation of the cession and unwarranted by the Constitution.[1] The advocates of the grant did not claim that the mere advancement of education in a particular State was a benefit to the other States. The day had not yet arrived when education was considered a part of the "general welfare," for which Congress may provide. The bill was defended on the ground that the donation would enhance the value of adjacent lands and attract settlers; that the remaining lands would afford a greater revenue because of the donation than the whole of them with no provision for education; and that for this reason the appropriation was a direct benefit to the whole Union.[2]

The grant made for the Virginia Military Reservation was subsequently found to be in such form as to make it unavailable for many years, and in 1807, in response to a petition from the General Assembly of Ohio,[3] a second and more specific appropriation was made in lieu of the former grant.[4] In 1805 the Indians relinquished their claims upon that portion of the Connecticut Reserve which they had hitherto occupied. It was not until 1834 that Congress, after numerous petitions from the General Assembly, granted to the State an amount of land equal to one thirty-sixth of the area

[1] "With what face of justice can we then put our hands into this common fund, or lay hold of any portion of these lands and apply them to the use and benefit of the people of one part of the country, to the entire exclusion of all the rest, as is contemplated by this bill? What authority have we to give the people of Ohio land equal to a thirty-sixth part of their whole State? It appeared to him an assumption of power which did not of right belong to them. It was an act of usurpation which he had not been able to discover any principle whatever to warrant or justify."—Annals of Congress, 7th Cong., 2d Session, 585.

[2] "While it [the proposed grant] protected the interests of literature it would enhance the value of property. Can we suppose that emigration will not be promoted by it, and that the value of lands will not be enhanced by the emigrant obtaining the fullest education for his children; and is it not better to receive two dollars an acre with an appropriation than seventy-five cents without such an appropriation? The gentleman is averse to a proposition which gives up nothing, but which will necessarily enhance the value of public property."—*Ibid.*, 586, 587.

[3] 5 Ohio Laws, 132.

[4] 2 U. S. Stat., 424.

of this tract.[1] This, with a small amount given in 1824,[2] completed the quota of school lands promised in 1802.

In 1824 the General Assembly petitioned Congress for leave to sell the thirty-eight sections of salt-spring or saline lands[3] and to apply the proceeds to literary purposes. At the following session of Congress the sale of these lands was authorized, "the proceeds thereof to be applied to such literary purposes as the said Legislature may hereafter direct, and to no other use, intent, or purpose whatsoever."[4] Finally, in 1871, all the unsold portions of the Virginia Military Reservation were granted to the State[5] and given by the latter to the Ohio Agricultural and Mechanical College.

In addition to these bountiful donations, the State at various times sought gifts for special educational purposes. The Legislature petitioned Congress in 1828 for a township of land for the education of the deaf and dumb,[6] and for a grant to Kenyon College,[7] and in 1834 for an appropriation of "a part of the proceeds of the national domain for purposes of education."[8] These and other petitions of a kindred nature received various degrees of attention in Congress, but all of them failed in their object.

The journals of Congress, from 1820 to 1860, are dotted with records of memorials, from nearly all the States, seeking grants for educational projects. Did a State desire to increase its school facilities, or start a new college, or assist an old one, the national government was immediately asked for land to further the accomplishment of the desire. Congress, having dealt liberally and impartially with each State at the time of its admission, has wisely refused to expend the public domain upon miscellaneous educational schemes, which ought to be supported by State resources. In a few instances only, has this policy been departed from, and then for special and valid reasons.

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[1] 4 U. S. Stat., 679.
[2] 4 U. S. Stat., 56.
[3] *Supra*, 28.
[4] 4 U. S. Stat., 79.
[5] 16 U. S. Stat., 416.
[6] State Papers, 4 Public Lands, 889.
[7] 26 Ohio Laws, Local, 174.
[8] State Papers, 6 Public Lands, 969.

(*b*) INDIANA.

In 1805 the Detroit land district [1] became the Territory of Michigan.[2] Four years later the Kaskaskia land district, containing essentially the territory now embraced in the States of Illinois and Wisconsin, was reorganized as the Territory of Illinois.[3] The Territory of Indiana, thus reduced in size, continued under its territorial government until 1816, when the inhabitants petitioned Congress for its admission as a State. Congress passed an act for its admission [4] wherein propositions similar to those made in the case of Ohio were offered to the constitutional convention upon the same conditions. There was, however, this important addition: "That one entire township, which shall be designated by the President of the United States, in addition to the one heretofore reserved for that purpose,[5] shall be reserved for the use of a seminary of learning and vested in the Legislature of the said State, to be appropriated solely for the use of such seminary by the said Legislature." The school lands were to be granted not to the State but to the people of each township. Thirty-six sections of saline lands were given instead of thirty-eight as in the case of Ohio. These propositions were accepted by the convention without modification.

In 1832 the Legislature was at its own request [6] authorized to sell the saline lands at a price not less than that of public lands, the proceeds to be applied to the purposes of education.[7] In 1852 this limitation on the price was removed.[8]

The title to a portion of the seminary lands granted to the State became the subject of litigation, in 1844, between two educational institutions, each of which claimed the lands under authority of acts of the Legislature. In 1854, after the case had been decided in the courts, the United States, in response to petitions from the defeated claimant and the legislature, granted an additional amount of land equal to that involved in the litigation.[9] This was certainly a gift

[1] *Supra*, 18.
[2] 2 U. S. Stat., 309.
[3] *Ibid.*, 514.
[4] 3 U. S. Stat., 289.
[5] *Supra*, 18.
[6] Indiana Laws, 1827, 103.
[7] 4 U. S. Stat., 558.
[8] 10 U. S. Stat., 15.
[9] 10 U. S. Stat., 267.

"without any compensation." The seminary townships had both been devoted to the use of colleges, and as it was neither contrary to the terms of the grant that the proceeds were divided by the Legislature between two institutions, nor through any neglect or fault of Congress that the double claim to them had arisen, no obligation rested on Congress to make restitution for an unfortunate blunder of the State authorities. In 1873 Congress granted to Vincennes University all vacant and unclaimed lands in Knox County, Indiana.[1]

(*c*) ILLINOIS.

When the people of the Territory of Illinois applied for admission into the Union in 1818, the grants made to her for educational and other purposes, though based upon the usual conditions, differed from previous grants in two important features. The school sections and the saline lands were granted to the State on the same terms as in the case of Ohio. Instead, however, of granting five per cent. of the proceeds of public lands for building roads, as had always been done in previous cases, the act set apart two per cent. for that purpose and three per cent. "to be appropriated by the Legislature of the State for the encouragement of learning, of which one sixth part shall be exclusively bestowed on a college or university."[2] This new feature, which promised a large additional fund for education, was introduced at the instance of the delegate in Congress from the Territory of Illinois.[3] He supported it on the ground that in other States the fund for building roads had been used in such ways as to produce little benefit; and that the soil of the proposed State was such as to afford her with little labor "the finest roads in the world." He then showed that to devote a portion of the five per cent. to the education of the people would confer the greatest possible benefit upon the people of the new State, because this fund would afford an immediate income while the educational lands were still lying unproductive.[4] However one may be disposed to

[1] 17 U. S. Stat., 614.
[2] 3 U. S. Stat., 428.
[3] Annals, 15th Cong., 1st Session, 1677.
[4] *Ibid.*, 1678.

question his statement concerning the roads in Illinois, it is true that the proposition to devote the proceeds to education had much in its favor. This novel and important amendment was unanimously adopted.

While two townships were granted for higher education, the appropriation was made in such terms as to permit the State to select at least one half of the lands in small tracts wherever a choice piece might be found. The older States had been compelled to locate each township as a single tract. As it is rare that all the land in any one township is valuable, the result was that Illinois obtained much better lands for higher education than could have been selected under the old requirement. The saline lands in Illinois, though subsequently sold, were not used for purposes of education.

(*d*) MICHIGAN.

In 1835 the Territory of Michigan held a convention and framed a State constitution. This constitution was adopted and the machinery of State government set in motion after application to Congress for admission into the Union, but before Congress had acted upon the application. The action of the territory was denounced by many members of Congress, who regarded the consent or authority of the United States as an essential preliminary step in the formation of a State government. The justification of the action of Michigan was found in the organic law of the territory. The ordinance of 1787 provided that the States formed from the Northwest Territory should be admitted upon the attainment of sixty thousand inhabitants. The population of Michigan exceeded that number. That she could not be admitted as a State without the action of Congress may have been true. That she had the right to frame a constitution and prepare for admission without the consent of Congress was a proper interpretation of the ordinance. The "irregular" proceedings of Michigan were used in Congress as a cloak to cover other deep-seated objections to her immediate admission as a State. These are not, however, germane to the present subject.

A dispute as to the boundary line between Michigan and Ohio also introduced a disturbing element into the question. At length an act was passed for the admission of the new State on the acceptance by a convention of the people of certain boundary lines on the south, in return for which a large tract between Lake Michigan and Lake Superior was to be attached to Michigan.[1] So little were the mineral resources of the Lake Superior region known at that time, that the first convention rejected the propositions, thinking a tract a few miles in width along the southern border of more value to the State than the wilderness of the upper peninsula. A second convention, called and held without any legal authority,[2] accepted the conditions. Congress, assuming that this convention was a legally organized body, admitted the State in 1837.

The ill feeling engendered in Congress by these disputes militated against the desires of the people of the State concerning education. The convention which framed the constitution in 1835, reversing the usual order of things, adopted an ordinance submitting several propositions to Congress for their approval or rejection.[3] Of the propositions touching educational matters the first provided that the sections number sixteen should be granted "to the State for the use of schools." This seemingly slight change from the usual terms[4] was made designedly and was of great importance. In the other three States the funds arising from each school section were required to be kept separate. While some townships had accumulated large funds, others, owing to poor lands or mismanagement of the proceeds, had little or nothing. By the proposed change the proceeds of all school lands in Michigan would be consolidated into one State school-fund. This could be more easily, safely, and economi-

[1] 5 U. S. Stat., 49.

[2] Campbell, 477, 478.

[3] Journal, Mich. Constitutional Convention, 1835, 219, 220.

[4] In the case of Illinois the law provided "that section number sixteen in every township shall be granted to the State *for the use of the inhabitants of such township* for the use of schools."—3 U. S. Stat., 428. In Indiana each school section had been granted directly to the people of the township in which it lay.—3 U. S. Stat., 289.

cally managed, while the income would be distributed *pro rata* to all parts of the State, thus insuring uniformity and equality in school facilities.

The second proposition secured the seventy-two sections or two townships of university lands to the State. The saline lands were to be granted to the State, unconditionally, and the usual five per cent. of the proceeds of public lands was to be distributed essentially as in Illinois—two per cent. for building roads, and three per cent. "to the encouragement of education."[1] Should Congress make these and other specified gifts, the State agreed to exempt public lands from taxation. Since the United States had ceased selling lands on credit, and the necessity and object of the exemption for five years no longer existed, the State, while conforming to the compact of 1787, omitted the usual clause providing such exemption.[2]

These propositions were rejected by Congress. Some of their features, however, were embodied in a series of propositions, afterward submitted by Congress to the State Legislature,[3] and accepted by the latter.[4] In this way the State succeeded in obtaining some of the desired modifications in the usual educational endowment provided for new States. The school lands were granted directly to the State as had been desired. The grant of the saline lands was limited to the power to lease them.[5] The five-per-cent. fund was to be used wholly for internal improvements, in obedience to older precedents, thus leaving Illinois as the only State, up to that time, in which a portion of the five-per-cent. fund was devoted to educational objects.

The conditions on which these grants rested were the same as those offered by the propositions of the constitutional convention—the State was to agree not to tax public lands, nor interfere with the primary disposal of the soil.[6]

[1] Journal, Const. Conven., 1835, 220.

[2] *Ibid.*

[3] 5 U. S. Stat., 59.

[4] Mich. Laws, 1835–6, 57.

[5] In 1847 permission was given to the State to sell these lands (9 U. S. Stat., 181), the State Legislature having represented to Congress that the lands "in their present form are unavailable and unproductive for the objects intended by the grant."—Mich. Laws, 1845, 154.

[6] This is almost the identical language of the ordinance of 1787.

This last innovation was strenuously opposed in Congress, where it was immediately perceived that it destroyed the *quid pro quo* appearance of the contract, on which many had become accustomed to lay stress in developing their theories of the powers of Congress under the Constitution. The change did operate to the advantage of Michigan as compared with Ohio, Indiana, and Illinois (and all other States admitted after 1802), but in the principle there was no change. Now as before the requirement was that public lands should not be taxed until the title had passed to individuals—until they had ceased to be public lands. The change in the system of selling lands produced the corresponding change in the form of these conditions. The new features of the propositions submitted at the admission of Michigan, have been used in the case of all States admitted since.

(*c*) WISCONSIN.

In 1836 the region now embraced in Wisconsin was detached from Michigan,[1] and formed into a separate territory.[2] In the laws reserving seminary townships for the Northwest Territory[3] the creation of a fifth State seems not to have been contemplated and no reservation was made for it. In 1838, however, on application of the territory, seventy-two sections or two townships were set apart for the use and support of a university within the territory.[4] When the territory applied for admission as a State in 1846 the usual propositions were offered to the constitutional convention.[5] In this convention the subject of education received special and unusual attention. The constitution which was framed by the convention provided that all lands granted to the State for educational purposes (except the university lands), all grants whose purpose was not specified, the five hundred thousand acres for the promotion of internal improvements, to which the State was entitled under a previous law, and

[1] Until 1818 it had formed a part of Illinois, but was detached therefrom and joined to Michigan, when Illinois became a State.

[2] 5 U. S. Stat., 10.

[3] *Supra*, 18.

[4] 5 U. S. Stat., 244.

[5] 9 U. S. Stat., 56.

the five per cent. of the proceeds of the public lands should form a permanent school fund.[1] This proposed use of the internal-improvement lands and the five-per-cent. fund, differed from that designated by Congress. The change proposed by the State could become operative only with the consent of the United States. The experience of Michigan showed the difficulties in obtaining the favorable action of Congress in such matters. However, the convention urged upon the National Legislature the advantages likely to result from the change. In 1848 Congress consented to the provisions of the constitution.[2] Wisconsin thus started out with a school endowment far greater in proportion to the area of the State than that of any of its older sisters. Had the wisdom and care subsequently shown in managing the grant been equal to the zeal displayed in obtaining it, the State would to-day be surpassed by no other in the amount of its educational funds.

The seventy-two sections of salt-spring lands included in these grants were never selected. In their stead Congress, in 1854, authorized the selection of an equal amount from any public lands in the State "for the benefit and aid of the State University."[3] This provision doubled the land endowment of the State University, which had received the benefit of the original seminary funds.

[1] Constitution, Art. X., Sec. 2. [2] 9 U. S. Stat., 233. [3] 10 U. S. Stat., 597.

PART II.

STATE LEGISLATION AND MANAGEMENT OF THE GRANTS.

A.—SCHOOL AND SWAMP LANDS.

In investigating the history of the management by the States of the various grants for schools, a study of the territory as a whole would present but a confused and unsatisfactory view of the subject. In one State the lands have been managed by local officers in the different townships, in another they have been controlled by one central authority, while in others they have been subject to the joint control of State and local officers. Again, in some States the policy of leasing prevailed in the earlier days, while in others sales were ordered at the outset. Still further, different theories as to the investment of the resulting funds have obtained in different States. For these reasons a separate examination of the policy and legislation of each State becomes necessary.

(*a*) OHIO.

The sixteenth sections were not formally given to Ohio until her admission as a State, and until then no steps were taken to utilize them for school purposes. The territorial authorities, however, seem to have exercised a supervisory control over the reserved tracts, for in 1799 a measure was adopted "to prevent the committing of waste" on the school lands.[1]

[1] Education in Ohio, 13.

As Ohio was the first State coming into possession of an extensive land endowment for education, she could look to no older State for ideas concerning its management. By the terms of the grant, in whatever way the lands were disposed of, only the income arising from them could be expended. The fund itself, whether kept in lands or turned into money, must remain intact forever. The constitution adopted in 1802 gave no directions for the management of this valuable trust. The task of devising a method of guarding and utilizing it was thrown upon the Legislature. In those early days the opinion seems to have been unanimous that educational interests would be best promoted by leasing the lands and applying the rents to the maintenance of schools. Abstractly considered, this policy rests upon a solid foundation. So long as public lands are abundant in a State—and they always are in a new State—it would be vain to expect that men will pay a higher price for school lands than is demanded by the United States for lands of the same quality, unless more favorable terms of payment are offered for the former. If, however, they can be leased until the best public lands have been sold, this difficulty is avoided. They can then be thrown upon the market at higher prices, and thus produce a larger permanent fund. While the State is sparsely settled, fewer schools are needed, and the annual rents from the leased property afford some revenue for that purpose. In this method there are, however, certain practical difficulties to which attention will be called in subsequent pages.

The first General Assembly of Ohio, in April, 1803, ordered the school lands to be leased for periods varying from seven to fifteen years.[1] The object of the act was not an immediate income, but, as the law itself declared, the improvement of the land, in order to make it productive of revenue in the future. The rent was not to be paid in money but by clearing a certain number of acres and planting trees. The business of leasing was entrusted to agents in the various counties and districts. The applicant who offered to make

[1] 1 Ohio Laws, 61.

the improvements on a piece of land in the shortest time was to be given the lease. Comparatively few tracts were rented under this law. The long credit then given by the national government to purchasers of public lands placed them within the reach of many who would have been unable to make full payment at the time of purchase.[1] This fact operated against the tenant system until Congress adopted the cash policy in its sales.

In 1805, leases for a money rent were authorized. These were at first confined to the sixteenth sections.[2] The township trustees were vested with the power to lease these for not more than fifteen years, "to those who made the most advantageous proposals." The rent was to be "impartially applied to the education of the youths" in the township where the leased land was situated.[3] By the land laws of the United States the western territory was laid off into townships of a fixed size. When for civil purposes Ohio was divided into counties and the counties sub-divided into townships, it frequently happened that the boundaries of these civil townships did not coincide with those of the surveyed townships of six miles square. Section sixteen had been granted for the benefit of the inhabitants of each original surveyed township. In 1806 these latter townships were incorporated with power to elect three trustees and a treasurer "for the purpose of leasing and managing" the school lands on the terms prescribed in the previous law.[4] For several years these general provisions for the sixteenth sections remained unchanged. Many lands were leased, and

[1] Governor Tiffin said, in 1804: "But few of the school sections are yet leased, and it is presumed for want of observing a more liberal policy, for when the means of acquiring a fee-simple to lands are so easy and almost within the reach of all, but few will be induced to improve lands not their own without sufficient compensation."—3 House Journal, 9.

[2] It will be remembered that the school lands belonging to the Connecticut Reserve and the two military districts were not sections sixteen. The school legislation for each of these districts is entirely distinct from that applying to the rest of the State.

[3] 3 Ohio Laws, 230.

[4] 4 Ohio Laws, 66. Only those townships which contained twenty electors came within the provisions of the act.

though the rent was small the constantly increasing value of the property afforded the prospect of a larger income after the expiration of the first leases.

The Legislature next turned its attention to the school lands belonging to the Virginia Military Reservation. For some reason the provisions of the previous laws were not applied here. With the very first act the State entered upon an unfortunate and unwise course which was not abandoned until a considerable portion of the fund had been irrevocably lost to the people of the district. By a law of 1809 the lands were to be surveyed and "sold" at public auction at not less than two dollars per acre, and the costs of the survey and sale. These costs were to be paid in cash. On the remainder the purchaser was required to pay six per cent. interest "yearly, forever, subject, however, to alteration by any succeeding Legislature, so as to enable the purchaser or purchasers to make such commutation as said Legislature may think expedient."[1] The title to the land did not pass from the State. A lease for ninety-nine years, renewable forever, was given to the successful bidder. By the proviso in the law, the lease might be altered in favor of the lessee, but not in favor of the State.

This was an evident attempt to force the school lands belonging to the district upon the market by offering more favorable terms than those given by the United States on public lands. To purchase government lands the settler must pay one fourth of the purchase money immediately, and the balance within five years. To purchase the school lands at the same price per acre he needed only to pay the petty expenses of the survey. For the moneyless immigrant here was a grand opportunity. To the school fund on the other hand it meant loss and waste. As far as the State was concerned, to rent on these terms was equivalent to selling outright. Not a single advantage claimed for the leasing system in its application to school lands can be found in this plan. Under a system of short leases any increase in the value of the property inures to the benefit of the lessor, and

[1] 7 Ohio Laws, 109.

enables him to demand higher rent on a subsequent lease. But a system of permanent leases, such as was set up by this law, deprived the schools forever of any benefit from the increased value, and gave the entire advantage to the lessee.

The Legislature did not stop here. In the following year the law was so amended as to permit the lessee at the time of "purchase" to make a cash payment of ten dollars per quarter section in lieu of the costs of survey and the first five years' rent.[1] The rent thus commuted for ten dollars, even if the lands had been leased at the minimum valuation allowed by law, would have amounted to ninety-six dollars.[2] As the result of these laws there are to-day under lease about ten thousand acres in this district at an annual rent of twelve cents per acre.[3] In 1810 the governor expressed a mild doubt whether these laws were beneficial to the interests of the schools.[4] Not till many years later, however, did any general opinion arise that such legislation was unwise.

From the terms of these laws one would infer that the wants of the schools in the district were pressing, and that an immediate income was desired and needed for the education of the children. Great, then, is one's surprise at finding that the rents were not used for school purposes for twenty years after the first leases were given. From 1815 until 1829 the money lay in the State treasury, subject to the use of the State. For six years of that time it brought no increase, but in 1821 the State began paying interest which was compounded annually.[5] In 1829 the fund was for the first time applied to the cause of education. The whole accumulated income was distributed over the Reservation,

[1] 8 Ohio Laws, 254.

[2] Even this did not satisfy the lessees, for in 1820 they represented to the Legislature that they had not understood that rent was to be paid until the expiration of six years from the dates of their leases. The Legislature therefore absolved them from the payment of rent for another year, although the original act could hardly have been misunderstood.—18 Ohio Laws, 71.

[3] Education in Ohio, 28.

[4] "It will not be an unimportant inquiry whether the most effectual measures have yet been taken to render the . . . [school] lands in this State subservient to the purposes for which they were granted."—9 Senate Jour., 8.

[5] 19 Ohio Laws, 146. Education in Ohio, 21.

and an annual distribution was to be made thereafter of all rents accruing.[1] Had the lands lain idle until the rent was thus properly used, they could probably have been leased for twice the sum obtained in 1809 and 1810.[2]

The General Assembly of 1816 realized the improvidence of such perpetual leases. Repealing the previous laws they provided that thereafter the lands in this district should be leased to the highest bidder for ninety-nine years, but that in 1835 and every twenty years thereafter the lands should be revalued by appraisers appointed by the governor, and that the lessee should pay an annual rent of six per cent. on each valuation until the next was made.[3] If fair appraisals could be ensured, a lease of this kind was even more advantageous than a shorter one, for to the good features of the latter it added the certainty of a permanent as well as increasing income.

During the years in which the lands of the Virginia Military District were passing from the hands of the State, the general law of 1805–6, providing for the lease of sections sixteen for periods of fifteen years, remained in force. Its value, however, had been in a great measure destroyed by special legislation. Numerous acts authorized the trustees of particular townships to rent lands on special terms, for periods varying from ten to ninety-nine years, with and without provisions for revaluation, and always at a low rent. It is beyond doubt that these special laws were passed at the instance of interested parties, sometimes even of members of the Legislature themselves,[4] who desired to obtain lands on better terms than those offered by the general law. It is equally certain that in most instances the lessees and

[1] 27 Ohio Laws, 51.

[2] In 1838 they were considered worth nine dollars per acre.—Report Supt. of Common Schools, 1838, 36.

[3] 14 Ohio Laws, 418.

[4] "Members of the Legislature not unfrequently got acts passed and leases granted either to themselves, to their relatives, or to their warm partisans. One senator contrived to get by such acts seven entire sections of land either into his own or his children's possession!!"—Atwater, 253. This book is valuable, but many statements, except where based on indubitable evidence, are to be received with caution.

not the schools derived the benefit from this special legislation.[1]

In 1817, the General Assembly, following the wise plan adopted in the previous year for the Virginia Military lands, authorized the proper officials to appraise the sixteenth sections still unleased and to lease them for ninety-nine years at a rent of six per cent. of the valuation, subject to revaluation every thirty-three years. Any section not rented at the appraised value within a year was to be leased to the highest bidder. The law applied also, with a change of executory officers, to the lands of the United States Military District.[2] As amended in 1821 no land was to be leased which had been valued at less than one dollar (!) per acre.[3]

Still the revenue applicable to schools continued so small, that by 1820 a general conviction prevailed that something was wrong. Many lands had been leased, yet the schools were deriving little from them. Few as yet perceived the true causes of the trouble. Even the Governor failed to locate the prime cause, though he was of the opinion that low rents might be in a measure responsible for the small net income arising![4] The Legislature if they saw any waste in the fund did not attribute it to low rents, for in the face of the Governor's suggestion they authorized the cancellation of leases on the ground that the lessees were "laboring under great embarrassment in consequence of the present reduced

[1] "The school lands have been in many instances leased out for different periods of time to persons who in numerous instances seem to have forgotten that these lands were given to the State for the support of education and for the benefit of the rising generation. . . . Shall we proceed on, legislating session after session for the sole benefit of the lessees of school lands at the expense of the State?"—From a report made to the Ohio House of Representatives in 1821. *Apud* Atwater, 257, 258.

[2] 15 Ohio Laws, 202. [3] 19 Ohio Laws, 161.

[4] "So far as my information extends, the appropriation of the school lands in this State has produced hitherto (with few exceptions) no very material advantage in the dissemination of instruction—none commensurate with their presumable value. Whether this be owing to the comparatively new state of the country and the low rate of rents; whether the property have been let too low on durable leases at unpropitious periods; or whether the fault be attributable to an injudicious application of the funds, or expense of management, is difficult to decide."—19 House Jour., 18.

price of agricultural produce and the high rents they are compelled to pay." [1]

One great cause of the existing state of affairs was too much legislation.[2] A few general laws, well enforced, might have brought to the schools a moderate income. The numerous special enactments resulted in a state of chaos, in the midst of which designing speculators reaped a harvest at the expense of the educational funds. This idea at last found voice in the General Assembly. In December, 1821, a committee on schools and school lands was appointed in the Ohio House of Representatives. They seem to have studied the problem with great care. In their report they reviewed the whole history of the school lands, and showed the evils resulting from the multitude of ill-advised, special laws.[3] This special legislation they rightly attributed to the importunity of actual or would-be lessees. Hence they inferred that the system was at fault, and that by abandoning it all incentives to special legislation would be removed and the past errors would not be repeated. To consider special legislation a peculiar attribute of the tenant system was manifestly an indefensible position. The experience of all States shows it to be an evil which, unless absolutely forbidden to the Legislature, will appear at any time and in all matters which can be made the subject of legislation. But so overpowered were the members of the committee by the existing ills that they advocated selling the lands in order to

[1] 19 Ohio Laws, 75. A still more striking case was an act authorizing the trustees of any township in Fairfield County to relinquish "any part not exceeding one half of the yearly rent or interest" on any lot therein, for two years.—19 Ohio Laws, 144.

[2] "From 1803 to 1820 our General Assembly spent its sessions mostly in passing laws relating to these lands, in amending our militia laws, and in revising those relating to justices' courts. Every four or five years all the laws were amended, or, as one member of the Assembly well remarked in his place, 'were made worse.' . . . The laws were changed so frequently that none but the passers of them, for whose benefit they were generally made, knew what laws really were in force. New laws were often made as soon as old ones took effect."—Atwater, 253. This almost contemporaneous account, while highly colored, is in a great measure verified by the official records of laws adopted.

[3] I have been unable to find an official copy of the report in Columbus or elsewhere. It is, however, given in full in Atwater, 257 *et seq.*

avoid all future temptation to yield to the petitions of interested lessees.[1]

In view of the opinions presented in this report a special commission was appointed to investigate the subject and consider the needed changes in legislation. Their report was made to the next Legislature,[2] and a committee of the Senate in 1823, "availing themselves of the report," made a long series of charges against the existing system of managing the lands. They showed that frauds had been practised in the appraisals; that the lands had been systematically undervalued by the administrative officers of the townships, and that the proceeds in many townships had been lost and squandered. These evils they attributed to the lack of proper checks upon the local officers, and to the absence of any general superintending authority.[3] The committee assumed that these faults could not be corrected in the future so

[1] "The committee are impressed with the belief that unless these lands are soon sold and the proceeds invested . . . in some productive stock, no good and much evil will accrue to the State from the grant of these lands by Congress. . . . Shall we proceed on, legislating session after session for the sole benefit of the lessees of the school lands at the expense of the State? or shall we apply to the general government for authority to sell out these lands as fast as the leases expire or are forfeited by the lessees? or shall we entirely surrender these lands to present occupants with a view to avoid in future the perpetual importunity of these troublesome petitioners?"—*Apud* Atwater, 257, 258.

[2] Of this report I have been unable to find a copy. Its conclusions are embodied in the report next considered.

[3] "During almost all previous legislation a local policy has prevailed . . . but on a full examination of the subject, it is their [the committee's] opinion that the interests of education require a change of policy. They are the more confirmed in this opinion as, by correct information received from various quarters, impositions and frauds have been practised, by which means the produce of the school lands in many places has been reduced to comparatively nothing. . . . The sections number sixteen being . . . distinct and independent of each other, without (by legal provision) any possible superintendence of the Legislature, or any person exercising authority under them, to detect fraud or correct abuses, produce necessarily an endless diversity in their management and faithful application of their proceeds; indeed, so much so that the opinion is becoming too prevalent that they are a proper subject of speculation. So great have been the impositions practised in this respect that in many places valuable lands have been appraised at the nominal sum of twelve and one-half and twenty-five cents per acre, as your committee are informed."—21 Senate Journal, 132–134.

long as the lands were subject to leases. Discouraged by the picture of ruin presented to their eyes, they recommended an abandonment of the system of leasing, and urged that the remaining lands be sold in fee, as soon as it became certain that the State had the authority for such a step. Pending the confirmation by Congress of this power to sell, they recommended that all laws authorizing permanent leases be suspended, that any lessee be permitted to surrender his holding, and that thereafter the lands be leased simply from year to year. These last recommendations were adopted by the Legislature,[1] though it must have been evident that only those tenants who had made poor bargains, and few had, would surrender their leases. Had this step been followed up by the establishment of proper checks against fraud and abuse by local officers it would have been easy to render the remainder of the lands productive of a moderate rent until the day arrived when, because of the need for more schools, it would have been wise, and from the settlement of the region possible, to sell the lands at fair prices. The next Legislature began to undo the work of its predecessor by enacting that sections sixteen might be subdivided and leased for fifteen years without previous appraisal.[2]

The friends of the schools now awakened, and the next elections brought into the Legislature men who were determined to see the end of this unfortunate chapter. They called upon the county treasurers in the United States Military District to make a report and transmit all school moneys to the State treasury.[3] More important still, they required each county assessor to make a list during the following year of all the school lands in his county, the number of acres, the names of lessees, terms of the leases, and a true valuation of the lands, which, together with other information, was to be forwarded to the State Auditor.[4] In the following year all subsequent leases of township school lands were again limited to one year.[5]

[1] 21 Ohio Laws, 33. [2] 22 Ohio Laws, 418. [3] 23 Ohio Laws, Local, 115.

[4] 23 Ohio Laws, Local, 114. This appears to have been the first attempt made by the State to find out exactly the condition of the trust.

[5] 24 Ohio Laws, 63.

But the doom of the tenant system in Ohio had been pronounced. The dissatisfaction with the existing condition of affairs had culminated in the report of 1823 already referred to. The suggestions there made had taken root. To avoid further development of evils which successive Legislatures by ill-advised and local legislation had engrafted upon the tenant system, not simply the vicious exotic growths were to be pruned away, but the whole system was to be extirpated, root and branch. As it was doubtful whether the State had the power to sell the lands, the General Assembly of 1824 framed a memorial to Congress praying for the passage of a law confirming this authority in the State.[1] In this paper all the possible disadvantages of the tenant system were set forth in the strongest colors. Imaginary and actual evils were blended in a curious combination. Few serious objections were raised which a wiser course of legislation might not have avoided in the past or removed for the future. The Legislature was, however, so determined on its object that they did not doubt that "these evils are such as cannot be remedied by any course of legislation whatever, if the State have not the power under the terms of the original grant of disposing of these lands in fee."[2] In 1826 Congress passed the desired legislation. The State was authorized to sell the lands and invest the proceeds in productive funds. No land could be sold without the consent of the township or district for whose benefit it had originally been given, while in apportioning the income of the fund each township and district was to receive that arising from the proceeds of its own school lands.[3]

Sanguine in the belief that at last the schools were to reap the full benefit of the munificence of Congress, the Legislature set about its new task. During the session of 1827 laws were passed looking towards the immediate sale of

[1] State Papers, 4 Public Lands, 47.

[2] This memorial contains a strong plea against the policy of leasing *in perpetuo*. Its arguments lack force when the system is adopted merely as a temporary measure to be abandoned when the value of the land shall have reached a point where further appreciation will be slow.

[3] 4 U. S. Stat., 138.

all the school lands in the State, except those belonging to the Connecticut Western Reserve. It was ordered that during the following year a vote of the inhabitants of each original surveyed township be taken on the question of selling the sixteenth section therein. The result of the vote was to be reported to the State Auditor.[1] In any township where no vote was taken or the result was unfavorable to the sale, a vote might be taken in any subsequent year on petition of a certain number of voters. Where the vote was in favor of the sale, the county assessor was to appraise with the improvements each parcel of land in the section, which was unleased or on which the lease expired within one year. On a date fixed by the Legislature, the land was to be sold at public auction, at a price not less than the assessor's valuation. Any not sold at the auction was to be disposed of at private sale. All moneys were to be paid to the county treasurer, and by him to the State Treasurer, separate accounts being kept with each township. This law was supplemented by an act "to establish a fund for the support of common schools,"[2] which required the State Auditor to keep a separate account with each township and district, of the proceeds of school lands therein. The faith of the State was pledged to preserve the funds and pay six per cent. interest thereon, to be distributed annually among the different school districts in each township in proportion to the number of families.

Separate laws were adopted providing for similar votes of the electors of the United States Military District, and of the Virginia Military Reservation.[3] In both districts the result was in favor of selling,[4] and the next Legislature prescribed terms of sale, essentially the same as for township lands.[5] In both cases the proceeds of the sales were to be passed into the State treasury, and six per cent. interest paid by the State to the districts for application to school expenses.

These provisions for sales could apply only to such lands as were not under permanent lease. The Legislature, how-

[1] 25 Ohio Laws, 56.
[2] 25 Ohio Laws, 78.
[3] 25 Ohio Laws, 103; *ibid.*, Local, 45.
[4] Education in Ohio, 24.
[5] 26 Ohio Laws, 23, 61.

ever, appeared to deem it necessary that lessees should have an opportunity to purchase their holdings, even though no advantage could accrue to the State by changing leases into deeds. Where a tract was rented permanently, the lessee was permitted to surrender his lease and to take a deed in fee on the payment of the last appraised value of his lands.[1] The folly of such an arrangement is amazing. To permit a holder to purchase his lands at a value put upon them from three to fifteen years before, was to give him the benefit of all appreciation in value since then. Most of the permanent leases required a revaluation, either in twenty or in thirty-three years from their date. The lessee should have been permitted to acquire the title in fee only upon the basis of that revaluation, or if he preferred not to wait, he should have been made to pay the full value at the date of purchase, as determined by a special appraisal. Under the law adopted many lessees availed themselves of the opportunity to purchase the property they had leased.

The effect of the provision for the surrender of leases was precisely what ought to have been foreseen, that the best leased lands were purchased at prices far below their true worth. The entire advantage promised by the revaluation clauses in the leases was lost at once, and the hopes and anticipations of a large increase in the fund were wrecked forever.[2] In 1838, upon the urgent recommendation of the Superintendent of Common Schools, an officer then known

[1] 25 Ohio Laws, 56, 103; 26 Ohio Laws, 23. This provision was by subsequent enactments made even more advantageous to the lessee. See 26 Ohio Laws, 10; 27 Ohio Laws, 40.

[2] "By the operation of this law the tenant may surrender his lease, and on paying the former assessment take a deed in fee-simple for land sometimes worth six times as much as he pays. Cases have come to my knowledge where land has thus been taken at six dollars per acre, worth, at the time, fifty dollars. Thus the township, which was in fact well provided with school lands, is deprived of almost the whole value by a law which can in no case operate for their benefit, but always against them. None but good lands are taken on those leases, and they are not surrendered unless they have greatly increased in value; the tenants, to be sure, make their fortunes, but the schools are sacrificed. The whole loss cannot be estimated now, though it must be immense—in some single townships more than fifteen thousand dollars."—2 Legislative Documents, 1838, No. 17, 41.

for the first time in Ohio, the Legislature repealed all laws authorizing the surrender of leases of section sixteen,[1] but did not change the provisions for the military reservations. The following year a law was enacted, which, if leases were to be surrendered at all, should have been enacted in 1827. Leaseholders at ninety-nine years were given one year in which to give up their leases, and were permitted to take a deed in fee at a valuation to be made at the time of surrender by three disinterested freeholders under oath.[2]

Some of the townships had voted not to sell their school lands, and in 1831 an act was passed permitting them to lease all unimproved lots for seven years, "for making such improvements as the trustees may think advisable," and all improved lots for three years, the rent to be paid in money.[3] This was a return to the policy laid down in the laws of 1803 and 1805. All moneys from leases were paid to the township treasurer and by him distributed to the school districts. This policy has obtained from then until now, and the rent from leased lands does not go into the State treasury.

In 1840, through the investigations of the Superintendent and the Auditor, several cases of loss and embezzlement in past years by county and township treasurers were unearthed and reported to the General Assembly. Hitherto there had been no officer, and hardly a provision of law, to render such acts by the local authorities difficult or hazardous undertakings. Now, however, a more strict method of accounting was provided.[4] The Auditor also instituted suits against the defaulting officials. Several of these cases were pushed to their termination, when the ardor of the prosecutor was cooled on finding that some of the defaulting treasurers were

[1] 36 Ohio Laws, 63.

[2] 37 Ohio Laws, 78. The period during which leases might be surrendered was several times extended.

[3] 29 Ohio Laws, 493. A proviso in the act required that in any township which had voted to sell its lands, no lease was to be given for a period longer than one year pending the sale. This was repealed in 1840, thus permitting leases as in cases where it had not been decided to sell.—38 Ohio Laws, 58.

[4] 38 Ohio Laws, 61, 62; 41 Ohio Laws, 62.

appealing to the Legislature for relief from the repayment of what they had misused. In some instances the Legislature actually passed bills of relief, and the fortunate officials were not compelled to restore the deficits. These proceedings discouraged the Auditor, and several pending suits were dropped.[1]

In 1843 a law was passed[2] revising the whole subject of the sale of section sixteen. The essential changes were that if the vote on the question of selling was favorable, the Court of Common Pleas was to appoint appraisers, who were to be non-residents of the township, to value the lands under oath. If their proceedings appeared fair to the court, the Auditor was, after due notice, to sell the lands to the highest bidder above the appraised value. A holder of a permanent lease wishing to surrender it must petition the Court of Common Pleas for permission, and if every thing appeared fair, he was to have a deed on paying the appraised valuation. By a law of the following year,[3] no holder of a permanent lease was permitted to surrender it except by a vote of the township. In 1845 five dollars per acre was fixed as the minimum price of all school lands. Thereafter no land was to be appraised at less than this, nor sold at less than the appraised value.[4] In 1852 all former laws relating to section sixteen were repealed, and a new law was enacted embodying all the later provisions with a few additions.[5] So few school lands then remained unsold that the provisions of the late laws could be of little service. In 1873 a general school law was passed containing the embodiment of all that was good in the immense mass of previous

[1] In his report for 1843 he says: "There seems to be no end to the plunder upon this fund. The multiplicity of these details has in no wise wearied me, but I confess that I have felt my energies relaxed by the facility with which 'relief bills' have been gotten up, and so often succeeded in the General Assembly. This fund has been most sadly and signally mismanaged from the beginning. The lands have been squandered and the fund has been plundered until it is now merely nominal in character. If sympathy for defaulters is to succeed to the wrong they have done, it is useless for a single officer to stand in the breach."—42 Ohio Laws, 19.

[2] 41 Ohio Laws, 20.

[3] 42 Ohio Laws, 43.

[4] 43 Ohio Laws, 58.

[5] 50 Ohio Laws, 168.

legislation.[1] Like that of 1852, it is substantially a repetition of the enactments of 1843, 1844, and 1845.

The school lands of the Connecticut Western Reserve, thus far unnoticed, now demand attention. For some fortunate reason, probably because the district was sparsely settled, the Legislature did not touch them during the troublesome era of lease legislation. Some of them had been leased for limited periods under the law of 1803. No perpetual leases had been given. The lands were thus entirely within the control of the district, when the policy of sales was entered upon by the State.[2] In 1828 the Legislature authorized the people to vote on the question of selling the lands.[3] The vote was not taken as provided, and the General Assembly then ordered it taken in October, 1830.[4] The inhabitants voted to sell, and in 1831 provision was made for the appraisal and sale of the lands, on terms easy for the purchaser and advantageous to the district.[5] All proceeds were to be paid into the State treasury. In 1833 it was ordered that these proceeds should be funded annually until the first of January, 1836, and that thereafter the income should be distributed annually to the public schools in the district.[6] The lands were soon sold and the final payments were made in 1837.[7]

It has already been stated that a large part of the land in this Reserve was held by the Indians when Ohio became a State, for which no school reservations were made by Congress until 1834.[8] This additional grant was about two thirds the size of the first. In 1835 the question of selling was submitted to vote.[9] The people decided that the wiser policy was to hold the lands until the country was more thickly populated, when they would be more valuable, and the need for schools more pressing. The lands were accordingly leased on short leases. In 1848 the question was

[1] 70 Ohio Laws, 230–238.

[2] After 1822 no new lease was to run beyond January 1, 1826.—20 Ohio Laws, Local, 34.

[3] 26 Ohio Laws, Local, 135.

[4] 28 Ohio Laws, 18.

[5] 29 Ohio Laws, Local, 90.

[6] 31 Ohio Laws, 24.

[7] Education in Ohio, 28.

[8] *Supra*, 33.

[9] 33 Ohio Laws, Local, 128.

again submitted, and the sale was ordered.[1] They were offered on the same terms as the first instalment, and were soon sold. The final payments were made in 1858.[2] The management of these lands was in accordance with what would seem the true policy to be observed in the disposition of school lands. Still it is probable that they were sold too soon. The average price received per acre was but two dollars and seventy-four cents. Had they been held a few years longer they could probably have been sold for from five to ten dollars per acre.

Of the school lands in the State, those belonging to the United States Military District and the Connecticut Reserve have all been sold. Of those belonging to the Virginia Military Reservation, all have been sold except about ten thousand acres, which are under perpetual lease. Over seven eighths of the sixteenth sections have been sold, but it is not possible to ascertain the exact figures, nor to know how much of the remainder is under perpetual lease.[3]

Since 1827, when the first laws concerning the sale of school lands were enacted, the money arising from the sales has been paid into the State treasury. In the early days the State borrowed these funds, from year to year, by special acts, paying six per cent. interest for their use.[4] In 1830 it was provided that all moneys thereafter coming into the treasury from these sales should be loaned to the State at six per cent., to be used for building canals, and when those were finished to be applied to the sinking fund.[5] From that time all such moneys have been borrowed by the State for its various needs, and the proceeds of the school lands exist only in the form of an irreducible State debt, on which the State pays interest to the school fund for distribution under the law, "and the faith of the State of Ohio is pledged for the annual payment" of the same.[6]

[1] 46 Ohio Laws, 38. [2] Education in Ohio, 28. [3] Education in Ohio, 29.
[4] See, for instance, 26 Ohio Laws, 73. [5] 28 Ohio Laws, 56.
[6] "The principal of all funds arising from the sale or other disposition of lands or other property granted or intrusted to this State for educational and religious purposes, shall forever be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations."—Const. 1851, Art. VI., Sec. 1.

Under the terms of the original grants by Congress it is required that each township or district shall receive the proceeds of its own lands. This has necessitated the keeping of accounts with each separate township or district, and on the books of the State Auditor are eight hundred and twenty-three distinct funds held in trust for the benefit of common schools.[1] These funds, owing to obvious causes, vary in amount. While some townships receive a good income, others, through the waste of their lands, have but a small fund and a slight income. The evil effects of this are obviated by a common school fund raised by State taxation, and annually distributed in such a way as to nearly equalize, according to population, the income of the different school districts.[2]

The salt lands, which were given to the State for educational purposes in 1824,[3] were ordered sold at public auction.[4] In 1827 a common school fund was established, to belong in common to the people of the whole State, consisting of the proceeds of these lands, together with such legacies and donations as might be made.[5] Interest was to be paid by the State, and to be funded annually until January, 1832. In 1831 the period during which the interest was to be funded was extended until the first of January, 1835,[6] after which all subsequent interest accruing was to be divided among the counties in proportion to the number of white male inhabitants. From 1835 until 1845 the annual distribution of interest was made. In the latter year, without any authority from the Legislature, the State officials ceased paying and distributing the interest. This condition of affairs continued unnoticed, or at least undisturbed, until 1873, when the State was pledged by law to pay annually the interest arising from "the money paid into the treasury

[1] Education in Ohio, 31.

[2] The constitution of 1851 provides that "The General Assembly shall make such provisions, by taxation and otherwise, as with the interest arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State."—Art. VI., Sec. 2.

[3] *Supra*, 34.

[4] 24 Ohio Laws, 41.

[5] 25 Ohio Laws, 78.

[6] 29 Ohio Laws, 423.

from the sales" of these lands.[1] The intention of this law was to make the proceeds of the sales a permanent irreducible common school fund, with interest payable by the State in accordance with the original law of 1827.[2] So far as I can ascertain, it has never been carried into effect, and now, as during the period from 1845 to 1873, the schools receive no income from the proceeds of these lands, which the State has received and spent. The fund, amounting to $41,024.05, has disappeared from view, and the State officials seem unable to locate it.[3]

In 1851 the Legislature provided that the proceeds of the swamp lands[4] should be added to the school fund.[5] In 1853 the law was modified and provision made for reclaiming and draining the lands, "to be paid for in said lands." The remainder, after paying all expenses, were to be sold and the proceeds paid into the treasury for the use of common schools.[6] The interest was to be funded until 1855, and thereafter distributed. There were but 25,640 acres of the land, and nothing reached the treasury from the sales for many years. In 1874 a few sales were made, and since then about six thousand dollars has been paid in. According to a law passed in 1873 this money should form a part of the permanent common school fund with annual interest at six per cent., payable by the State,[7] but in reality it has been used for school expenses as fast as it has been paid in.[8]

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[1] 70 Ohio Laws, 195, Sec. 132. "The State is in truth bound to pay interest on the principal of the fund which [by the accumulation of interest?] is some thousands of dollars more than the proceeds of the sales."—Education in Ohio, 32.

[2] See Revised Stat., 1880, Sec. 3952.

[3] "*No such fund exists at present.* The reports of the Auditor of State for 1870–71 show that the sum of $41,024.05 was credited to the 'salt'-land fund. No interest was paid on this fund, and the reports fail to show how it was distributed, though our predecessors inform us it was disbursed with the common school fund."(!)—Extract from a letter of the Auditor of State, dated May 19, 1884.

[4] *Supra*, 20 *et seq.*

[5] 51 Ohio Laws, 357.

[6] 49 Ohio Laws, 40.

[7] Revised Stat., 1880, Sec. 3952.

[8] "About $6,000 has been paid in on the 'swamp' lands and distributed with the common school fund."—Extract from letter of Auditor of State, May 19, 1884.

Such is the history of the management of the school lands in the State of Ohio. That the possibilities of the grant have not been realized is acknowledged and regretted by all. In the preceding pages some of the causes for this failure have been indicated. Others remain to be noticed. The great underlying cause was one by no means peculiar to Ohio or to the times—the failure to appreciate the responsibility imposed upon the State in guarding this immense trust. To this was added a lukewarmness in many parts of the State on the subject of common schools. These two facts produced a general carelessness in legislation on school matters.[1] Further, nearly every change made in the laws was of necessity an experiment. If her errors were more numerous than those of her sister States, some of them must be attributed to this circumstance.

It seems undeniable that many of her lands were forced into market in advance of any call for their sale. They were leased or sold in districts thinly settled and where prudence would have urged delay. True, they were not sold except by vote of the inhabitants of the township or district, but where any other local interests would be benefited by sales the people were apt to ignore the effect on the school fund. So long as the State was the guardian of the property, she ought not to have sanctioned proceedings which sold lands for five, ten, or twenty per cent. of what might have been realized.[2]

[1] Governor Lucas said in 1832: "Never until the session of 1824–5 could the Legislature be brought to give their assent to the passage of a bill to regulate common schools. The first act met with serious opposition in some parts of the State, and petitions were presented for its repeal. . . . But I trust the time is not far distant when public opinion will be concentrated in favor of supplying the means of instruction. All that is wanted is to have public opinion in its favor."—31 House Journal, 54. In 1827 the Governor in his message says: "That our energies and resources have been and are directed to other objects, while the cause of education has been neglected or feebly supported, is obvious to all."—26 Senate Journal, 11.

[2] "It is not uncommon to find land sold for fifty, forty, thirty, twenty, ten, and in one case even as low as five cents per acre. Men have become purchasers of whole sections for a mere trifle, and that sometimes where it only required a few years to have realized five, ten, fifteen, or twenty dollars per acre. And let it be borne in mind that in most cases where school lands have been

In 1837 a State Superintendent of Common Schools was appointed. His investigations soon showed that such an officer had been needed in years past to enforce the proper execution of the laws and to advise regarding necessary legislation. Among his first labors was the examination of the condition of the school lands and funds. In the course of this work, he brought to light many evils and much obliquity on the part of local officials. Whether because he had probed too deeply into past transactions and spoken too plainly of past errors, or for other reasons, the office was abolished in three or four years, and its duties added to those of the Secretary of State. His labors bore fruit, however, in more carefully devised and better executed laws.

One of the most serious charges brought by the Superintendent was, that special legislation had seriously interfered with the workings of the general laws, as well after as before the policy of sales had been adopted, and always to the disadvantage of the trust fund. The State Auditor also devoted attention to the subject, and in his conclusions coincided with the views of the Superintendent. "A most serious evil," he says, "to the portion of the community interested therein, has grown out of the loose character of our legislation upon the subject of school and ministerial leased lands."[1] It seems clear that had the general laws, bad though many of them were, been permitted full execution, much that was ill would have been avoided.[2]

sold at two, three, five, or even ten dollars per acre, the public has lost a hundred per cent. by pressing the sale too early."—Report of Supt. of Common Schools, 1839, 58.

[1] Auditor's Report, 1839, 20, printed in 38 Ohio Laws.

[2] "The evil perhaps cannot be better portrayed than by citing a single case. . . . Fractional section 29 in the 4th township, fractional range in Hamilton County, was originally leased as other lands. On the 29th of January, 1821, a special act was passed by the Legislature, by which the trustees were 'authorized and empowered, with the consent of the present lessee, to re-lease the same *upon any terms* which in their opinion would best secure the interests of the township.' Under this broad power a new lease was given to the lessee, subject to a rent of forty dollars per annum, and *dispensing with all future revaluations.* The tract lies immediately . . . adjoining the city of Cincinnati. It is still held under the lease of forty dollars per annum, and at this day [1839] is estimated to be worth not less than *one hundred thousand dollars.* . . . This is an

The abolition of the leasing system had not done away with special legislation. As before, acts affecting individual townships or particular lands were passed on the petition of parties interested in obtaining special privileges. All kinds of special and local legislation were enacted.[1] The difficulties in resisting these petitions were great, but had the interests of the cause of education lain closer to the hearts of the people and legislators, successful resistance could have been made.[2] The Auditor pleaded for a radical change. "Much waste," he says, "has been committed, and much wrong has been done; but if special legislation can be avoided for the future, if our present laws can remain in force, if salutary provisions can be observed for a correct appraisement before sales, and a strict system of accountability be persevered in, the remnant of our lands may be made a valuable inheritance to those of our people who have re-

isolated case, but there are hundreds in existence in our religious, and, what is equally important, in our school lands, where, in the looseness and inadvertence of special legislation, the revaluation clauses have been repealed, and the causes of religion and education deprived of the benevolent grants for their support."—*Ibid.*, 20. Again he says: "In addition to the instances before given of the repeal of revaluation clauses, there are special acts granting privileges to surrender leases at old, and consequently low, valuations—acts authorizing sales without sufficient guards as to appraisement, and last, though not least, special laws changing in particular cases the modes of sale from those adopted in the general law on the subject."—*Ibid.*, 32.

[1] "Ohio has perhaps more than any other State suffered from the over-abundance of private legislation, of charter-mongering, contract-letting, and debt-creating. Corruption has, through unstable and hasty legislation, burdened the people with debts and taxation to a deplorable extent. No State has greater reason than Ohio to complain of the iniquity of the lobby. For years the business of lobbying for counties and towns and city charters was a lucrative one, and private emolument has been the basis of five sixths of the legislation in Ohio, as well as of other States. . . . The State Legislature has come to be regarded more as the means of exacting something from the public, than as the meeting of the delegates of the people assembled to transact public business under written instructions. Surely these evils are to be removed, and they may easily be done away with by general laws."—Democratic Review, March, 1847, 202.

[2] "I can refer to my own experience for evidence of the honest zeal with which legislators often strive to gratify their constituency in the passage of special acts where individual interest conflicts with public advantage."—Auditor's Report, 1839, 32.

tained them from the common sacrifice."[1] The blame was due not only to the Legislature, but to the people who had permitted—nay, sought—much of this disastrous local legislation.[2] But all eyes were finally opened by the efforts of the Auditor and others, and the worst evils were soon corrected. Had the awakening come a few years earlier, the people of Ohio would have less to regret in the management of their school lands.

(*b*) INDIANA.

The territorial Legislature of Indiana exercised a more immediate control over the lands reserved for schools than did the territorial authorities of Ohio. In 1808, four years after the lands were reserved, the Courts of Common Pleas in the various counties were authorized to lease school sections during the ensuing year, on improvement leases, for not more than five years, the lessee to clear at least ten acres for each quarter section held by him.[3] Two years later, the same courts were empowered to lease the lands under such restrictions as seemed best to them. No lessee was to have more than one quarter section. The proceeds were to be applied by the courts "to the support of common schools according to the true intent of the Act of Congress."[4] Here, then, six years before the lands had actually been granted and Indiana had become a State, was a law looking to the establishment of a revenue for the schools. Without discussion, the plan of leasing had been adopted. The law unfortunately left the period of the leases subject to the discretion of the Court of Common Pleas.

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[1] Auditor's Report, 1840, 32.

[2] "If these existing evils are beyond remedy, if it be that . . . special legislation—that bane of all governments—has walled these injuries about so well with *vested rights* that no virtue but endurance is left, it will form another of the deep-seated evils—the strangely infatuated waste of property that has marked the disposition—nay, almost destruction—of the benevolent grants of Congress for religious and school purposes, and which, now looked upon, cause every good heart to beat with pain, not at the improvident, unjust range of special legislation, but the heartlessness of individual avarice and cupidity which has thus rioted upon the invaluable inheritance of posterity."—Auditor's Report, 1839, 20.

[3] Territorial Laws, 1808, 36.

[4] Territorial Laws, 1810, 46.

It has already been seen that when Indiana was admitted as a State the school lands were given not to the State but to "the inhabitants of the township." The Legislature could, therefore, exercise no immediate control over the funds, and could merely lay down general rules for the guidance of the local authorities in managing the trust. The constitution adopted by the State provided that no school lands should be sold before the year 1820.[1] The first session of the State Legislature authorized[2] the appointment of a superintendent in each township to manage section sixteen. He was empowered to rent unleased lands, "to the best advantage, for not more than seven years." Cleared land was, however, to be leased for only three years.[3]

In 1821, a special committee of the State Senate was appointed to investigate the condition of the school lands, and to report the best plan in its opinion for deriving a revenue from them. The report of this committee discussed the relative advantages of cash sales, credit sales, and permanent leases, and after a careful presentation of the arguments in favor of each, held that a system of cash sales with the proceeds immediately funded was the best permanent policy.[4] The arguments against leases were drawn from the experience of Ohio and other States.[5] To the conclusions of the committee no valid objections exist, provided the lands are not forced upon the market at too early a day. This report produced no immediate change in the policy already adopted.

The next step carried the Legislature away from solid ground. The same lack of coincidence between the boun-

[1] Constitution, 1816, Art. IX., Sec. 1.

[2] Indiana Laws, 1817, 104.

[3] The lessee was to set out fifty fruit-trees each year, for which a deduction was to be made from the rent. The superintendent had full power to prevent trespass and waste upon the lands. In 1818, the period of these leases was changed from seven to nine years.—Indiana Laws, 1818, 301.

[4] Senate Jour., 1821–22, Appendix.

[5] "The system has been adopted in many parts of the United States . . . of leasing the lands either permanently or for a life or lives. But the same beneficial results have not been here as in Europe."

daries of the surveyed or congressional townships and the civil townships existed in Indiana as in Ohio, and in 1824 a law was passed to incorporate the congressional townships for the purpose of creating a controlling power over section sixteen. Trustees elected in each township were to have control of the school lands therein, and "to dispose of them in such manner as is for the best interest of the schools," but no sale in fee was to be made.[1] Every guard against a waste of the grant was thrown down by this law. Here was authority given to lease the lands on any terms for any length of time, with no saving clause except that the lease, like all others, might be cancelled if the lessee failed to keep his part of the contract. Truly, this was a method of dissipating the grant, easier and simpler than the Ohio plan of numerous and complicated special laws. As the ideas of the trustees of the various townships differed on the value and importance of the grant, uniformity in the leases was not to be expected under this arrangement. Probably few of the trustees had ever given any thought to the subject, and when they were invested with full power over the lands, it is little wonder that the terms of some leases were absurd and improvident.[2] It required but one year to satisfy the Legislature of the improvidence of this measure. In 1825 the law was amended, so that leases could not thereafter be given for more than ten years, while in all other regards the terms were still left to the judgment of the trustees.[3] It soon became apparent that the funds were suffering vast waste and loss in many townships. The people saw that too much responsibility was thrown upon the local trustees, many of whom were not qualified for the position. The unfortunate terms of the grant, by which each township was made the owner and manager of its section sixteen, made the evil in a degree unavoidable. But the Legislature should

[1] Indiana Laws, 1824, 379.

[2] The effect of this law and of the similar territorial law of 1810 was shown by Governor Ray, in his message of 1826, where he says: "There are already leases given in this State on these lands for almost every term from five to ninety-nine years."—Senate Journal, 1826, 33.

[3] Indiana Laws, 1825, 93.

have adopted more stringent regulations, leaving as little to the judgment of the trustees and the township as was compatible with the conditions of the grant. A uniform system of leases for the whole State would have preserved the lands in better shape, until the proper moment came for selling them.[1] The failure to provide such a system from 1810 to 1826 gave opportunity for irregular and unwise acts of trustees by which many township funds suffered irreparable damage.

Causes were now at work which turned legislation in another direction. The petition of Ohio for power to sell her school lands, the favorable answer of Congress in 1826, and the growing conviction that, for Indiana, owing to the peculiar conditions under which the school lands were held, the system of leasing was a disadvantageous one, drew attention to the policy of selling. In 1827 the Legislature asked Congress for authority to order sales.[2] Congress, in 1828,[3] granted the power with the same restrictions and limitations that had been imposed upon Ohio.[4]

At the next session of the Legislature provision was made for obtaining a vote of each township on the question of selling its lands, and for reporting the same to the General Assembly.[5] Where the townships voted to sell, the trustees were to place a minimum value of not less than $1.25 per acre, on each parcel of land. The county commissioner of school lands was then to sell them at public auction. Any leased lands might, with the concurrence of the lessee, be sold subject to the lease, or the lease might be

[1] "That section of land in each congressional township for the use of common schools," said Governor Ray, in 1826, "requires your particular notice. The laws regulating these lands are susceptible of improvement. Something should be done to prevent the commission of waste of them. What strikes me as most likely to succeed under the present mode of disposing of them, is to give long leases for a certain and determinate term of years on a yearly ground-rent, and to subject trespassers to an indictment in the Circuit Court. . . . *Whatever plan you may devise let it have uniformity in view.*"—Senate Journal, 1826, 33.

[2] Joint Resolution, January 25, 1827. Indiana Laws, 1827, 103. State Papers, 4 Public Lands, 957.

[3] 4 U. S. Stat., 298.

[4] *Supra*, 52. The act was a literal copy *mutatis mutandis* of the one authorizing sales in Ohio.

[5] Indiana Laws, 1828, 112.

cancelled.[1] This law, modelled upon those of Ohio, was an improvement upon the latter in two particulars. By fixing a minimum value, no lands could be sold at such prices as ten, twenty, or thirty cents per acre, as had happened in Ohio. Neither could lessees here purchase their holdings at a valuation made years before, when they first obtained their leases. Any one who purchased, even though he were a former tenant, must purchase at public auction at a price not below that set by the trustees. Where the township voted not to sell, or where for want of bidders no sale was made, the township trustees were to lease the lands for any term not exceeding ten years.[2]

Another feature of the Indiana system grew out of the terms of the original grant. In Ohio the State controlled the funds arising from the sale. In Indiana, on the other hand, the Legislature did not assume the immediate and direct handling of the funds, but, leaving them with the county commissioners, contented itself with directing in a general way how the moneys should be invested. By the law of 1829 the county commissioners were instructed to loan the proceeds of the sales on real-estate mortgages bearing six per cent. interest and running not more than three years.[3] In 1831 occurred a general revision of the laws of the State, and a few changes were made in the provisions touching school lands. The most important was the establishment of a State loan-office, and the provision that any funds arising from the sales should either be deposited in this office or loaned by the county commissioner on mortgage, as the township might order by vote. If deposited in the loan-office, the State guaranteed the payment of six per cent. interest.[4] Where money was loaned on mortgage by the county commissioner only three hundred dollars could be loaned to any borrower.

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[1] Indiana Laws, 1829, 120.

[2] This limit was reduced to eight years in 1831. Since 1830 the consent of a majority of all legal voters in the township has been required to authorize a sale.—Indiana Laws, 1830, 150.

[3] Indiana Laws, 1829, 120.

[4] Revised Code, 1831, Chap. LXXXVI. Only three or four townships placed their funds in the hands of the State.

The habit seems to have obtained in Indiana of reënacting a whole law whenever it was desired to make an amendment to one or more sections of it. Accordingly in 1833, 1837, and 1841, complete laws were enacted concerning the school lands, which, save in a few minor particulars, were mere re-enactments of the revision of 1831.[1] The only important change was one made in 1833 reducing the limit of leases from eight to three years.

While these laws established all necessary safeguards for appraisement and sale of the lands, the provisions for the investment of the proceeds would impress a careful business man as likely to result in loss. Few capitalists would entrust to an irresponsible and untried agent the business of loaning their money on mortgages without more careful instructions and limitations than were imposed by these laws. The system of accounting—if, indeed, it may be called a system—consisted in reporting annually the amount on hand and amount loaned. Under these conditions it was natural that through ignorance or connivance some of the county commissioners should lend money on worthless securities, and that in a few instances portions of the funds were permanently borrowed by the commissioners without interest. A suspicion seems to have occurred in 1841 that the moneys were not carefully invested, and the reports of that year were examined more closely by the State authorities. The result is thus told by Governor Biggar: "The returns from a portion of the counties show their school funds to be well managed. In others they may be safe, but the accounts are in so much confusion that no correct opinion can be formed. In some cases the whole fund has been totally, irretrievably lost."[2] He intimated that a thorough investigation was necessary, in order to ascertain what was the actual condition of the funds, and what was needed to rescue them from the existing "chaos and confusion."[3]

[1] Indiana Laws, 1833, 83; 1837, 15; 1841, 51. [2] Senate Journal, 1843, 20.

[3] "The unofficial investigations already made show enough to establish the necessity of searching for funds which have been misapplied or apparently lost, and of tracing their history from the time they first came into the hands of the agents entrusted with their management."—*Ibid.*, 21.

Whether as the result of these disclosures or from other causes, all proceeds of sales were, in 1843, ordered to be paid over to the county treasurer and loaned by him. A more accurate and systematic method of book-keeping was inaugurated, and strict account was to be rendered annually of the state of the various township funds. This change resulted in a more safe and economical management and investment of the funds, and in the clearing up and straightening out of the tangled accounts of the commissioners. In the course of this work it was found that much money had been lost through poor and unwise loans.

For several years the State had been accumulating a fund for the support of common schools in addition to that derived from the township lands. This was drawn from such various sources, was intrusted to so many different officials, and invested in so many ways, that its management had caused much expense, while the money itself was not always secure from loss. In 1849 an attempt was made to simplify the system.[1] But the evil was of such magnitude[2] that the constitutional convention of 1851 sought to remove it by consolidating the various funds into one "common school fund." The fund was to be kept intact, and its income inviolably appropriated to the support of common schools.[3] The township lands and their proceeds were, by the new constitution, apparently made a part of this common school fund.

Tired of the continual losses and shrinkages occurring through the carelessness of the county officers, by whom certain of the funds were invested,[4] the framers of the con-

[1] Indiana Laws, 1849, 123.

[2] "The whole concern as it has been heretofore managed is . . . utterly odious in every respect. . . . The funds have been entrusted to the custody of an army of officers, whose fees and perquisites must necessarily consume a large part of the income of the various funds, if they be ever so well managed. . . . Our present system is extravagant and wasteful, the management of our school funds costing us annually one third as much as that of the State government." —Debates, Constitutional Convention of 1851, 1882, 1883.

[3] Constitution, 1851, Art. VIII., Sec. 2.

[4] "We have been the passive recipients of the bounty of the United States, and have, by our neglect and mismanagement, wasted thousands of dollars of the principal of this bounty."—Debates, Constitutional Convention, 1851.

stitution inserted a clause making each county responsible for the preservation of any school funds in its hands.[1] This provision, if enforced, would ensure the careful handling and investment of the principal of the school endowment.

In 1852 the Legislature, following, as they believed, the letter and spirit of the constitution, abolished the corporate existence of the congressional townships, and provided that the income of the whole school fund, including that derived from lands, should be distributed ratably among the counties for the support of schools according to the number of enrolled scholars.[2] This enactment was plainly inconsistent with the acts of Congress already cited,[3] by which the proceeds of each school section were secured to the inhabitants of the township in which it lay. Whatever may have been the general advantages of a uniformity of funds and income throughout the State, it was not to be expected that, in view of its legal rights, a township which had been so fortunate or wise as to derive a large fund from its lands, would consent to share the result of its care and thrift with some less prudent township. Accordingly one of the townships applied to the courts to enjoin the county officials from executing the law and diverting the income belonging to the township to the support of schools elsewhere. A temporary injunction was granted. The matter was then carried before the Supreme Court on appeal.

This trouble grieved the Superintendent of Public Instruction, who viewed it as an attempt to break down the school system established under the new constitution. He thought that the suit was prompted by motives of selfishness, and not because any injury or injustice resulted from the law.[4] He even entered into a useless argument to show that it could never have been the intention of Congress to make the grant in such form as to cause an inequality of funds, and hence of school facilities, in the different townships.[5] There can be no doubt that this inequality was an

[1] Constitution, Art. VIII., Sec. 6.
[2] Revised Statutes, 1852, chap. 98.
[3] *Supra*, 35, 67.
[4] Report Supt. of Public Instr., 1852.
[5] *Ibid.*, 1853, *passim*.

evil, but in order to remove it the State could not presume to violate the plain terms of the trust.

The Supreme Court, in the opinion rendered in the case,[1] reviewed the whole legislation of Congress and the State on the subject, and decided that the law of 1852, in so far as it subjected the proceeds of the school section to distribution outside the township in which it lay, was contrary to the terms of the grant and to the State constitution.[2] The injunction was therefore made perpetual.

In consequence of this decision the law was revised in 1855.[3] The income from the township lands and funds was secured to the townships as before, while the school moneys from all other sources were consolidated into the common school fund. A plan was devised whereby the income of this latter fund was so distributed that, taken in connection with the income from the lands, it made the school revenue of the townships nearly proportional to the number of school children in each.[4] In this way the former inequalities were avoided without violating the rights of the townships. According to this same law the township funds were thereafter to be loaned by the county treasurer on mortgages at seven per cent. The Superintendent of Public Instruction who, in 1852, had opposed this system of loans as liable, judging from past experience, to result in loss,[5] later became its advocate, believing that the constitutional provision making the counties responsible for all losses removed the objections to it.[6]

In 1865 a complete school law was enacted[7] whose provisions, so far as they pertain to the lands, are substantially like those in force to-day. By this law the proceeds of the lands are deposited with the county treasurer and by him loaned to individuals on mortgages at a rate of interest es-

[1] State *et al. vs.* Springfield Township, 6 Indiana Reports, 83.

[2] Art. VIII., Sec. 7, which had apparently been overlooked when the law of 1852 was passed, reads: "All trust funds held by the State shall remain inviolate, and be faithfully and exclusively applied to the purpose for which the trust was created."

[3] Indiana Laws, 1855, 161.

[4] *Ibid.*

[5] *Ibid.*, 1853.

[6] Report Supt. of Public Instr., 1852, 47.

[7] Indiana Laws, 1865, 37.

tablished by law.[1] The income is distributed annually to the proper township. Where the lands are not sold the township trustee may lease them for not more than seven years at a rent determined by the township meeting. This rent is paid by the trustee to the county treasurer, with whom it remains until the next distribution of income. When a sale is ordered it is conducted in the same way as that laid down in the law of 1829. The amount of funds and income is each year reported to the State Auditor.

Of the township lands all have been sold except about 7,400 acres, including some acquired by the foreclosure of mortgages given to secure loans.[2] A large part of this unsold land is under permanent lease, so that the township funds can increase but slightly in the future.

It has already been mentioned that in 1832 Congress gave the State permission to sell her saline lands for the benefit of education.[3] In the next year, by order of the Legislature, the lands were surveyed, appraised, and offered for sale.[4] The proceeds were to be loaned by the State Treasurer on mortgages, and both principal and interest were "to be hereafter devoted to education."[5] By a later law the income was definitely appropriated "to the use of common schools."[6] This method of handling the fund was pursued until 1844, when it was ordered that all moneys "already in hand or to arise hereafter" from these lands should be divided ratably among the counties. Each county was to loan its share and apply the income to the support of schools within its limits.[7] In pursuance of this arrangement all receipts until 1854 were placed in the hands of the counties as a part of the common school fund.[8]

By 1850 the best of the land had been sold, and it was

[1] This rate since 1873 has been eight per cent.—Indiana Laws, 1873, 73.

[2] Report Supt. of Public Instruction, 1882, 202. [3] *Supra*, 35.

[4] By the requirements of Congress they could not be sold for less than one dollar and a quarter per acre.

[5] Indiana Laws, 1833, 125. [6] *Ibid.*, 1834, 326.

[7] *Ibid.*, 1844, 68. Amended by act of January 12, 1845.—*Ibid.*, 1845, 60.

[8] The amount of receipts from sales thus distributed was $48,943.13.—Auditor's Report, 1872.

thought that the remainder could not be disposed of save at a lower price than the State was permitted to receive. On due presentation of this opinion to Congress the limitation on the price was removed.[1] The lands were thereupon ordered sold at public auction at a minimum price of fifty cents per acre.[2] The proceeds were not to be distributed among the counties as before, but were to be held by the State as a part of the school fund. The lands sold slowly, but by 1873 all had been disposed of and the final payments made by the purchasers. The money was borrowed by the State from time to time, at six per cent. interest. The Legislature has adopted the policy of issuing special non-negotiable bonds bearing six per cent. interest for all portions of the school fund held and used by the State. The receipts from the saline land since 1854 have been consolidated with other school moneys, and are represented by portions of these bonds.[3]

By the constitution of 1851[4] the net proceeds of the swamp lands granted by Congress in 1850 were made a part of the common school fund. In furtherance of this provision the treasurer of each county was directed by law to sell the swamp lands lying in his county. The money was to be deposited with the State and the interest thereon annually distributed to the schools.[5] The provisions of the law were not in harmony with the terms of the grant, according to which the first duty of the State was to drain and reclaim the lands. After they were thus reclaimed any income from them might be used for such purposes as the Legislature or the constitution designated. The law of 1852 was repealed three years later, and a swamp-land commission created in each county to take charge of the work

[1] 10 U. S. Stat., 15.

[2] Indiana Laws, 1855, 160.

[3] In 1865, $34,323.89 from this source was thus incorporated.—Auditor's Report, 1868, 12. Indiana Laws, Special Session, 1865, 57. Again in 1873 the last receipts, amounting to $6,211.45, were so placed.—Auditor's Report, 1873, 79. These two amounts are in addition to the portions of the fund held by the counties under the law of 1844.

[4] Art. VIII., Sec. 2.

[5] Revised Stat., 1852, Chap. 104.

of reclamation. As fast as possible the lands were to be sold and the proceeds paid into the State treasury and credited to the swamp-land fund of the county whence they were derived. Out of this fund the expenses of the enterprise were to be paid, after which the residue was to go to the school fund.[1]

Many lands designated as swamp were not such in reality. These sold readily, while many others, especially in one portion of the State, required much labor and expense to render them of any value whatever. Large sums have been received from the sales, but the expenses have mounted up proportionately. Of the proceeds about thirty-eight thousand dollars have been added to the school fund.[2] The whole matter is at present in a tangled state, but there is no probability that the schools will derive any thing further from this source. It is charged that the grant has been neither carefully nor economically managed, and that an honest execution of the law of 1855 would have brought many thousands of dollars into the school fund.[3]

The experience of Indiana in the management of all these school funds has developed a few interesting features. While following closely in the footsteps of Ohio, she avoided all the serious pitfalls into which her older sister stumbled. Of giving permanent leases without provisions for revaluation she happily soon learned the folly. When she adopted the system of sales, by giving the former lessees no "preëmption right" to purchase at old and low valuations, she escaped another evil. Of special legislation she had little. Her provisions for the sales were reasonably prudent. If, on the

[1] Indiana Laws, 1855, 204.

[2] Indiana Laws, 1873, 41. Auditor's Report, 1873, 79.

[3] "It is believed by good men that much might have been thus added [to the school fund] if the Swamp Land Commissioners had cared less for themselves and more for education—briefly, if they had all been honest."—Report Supt. of Pub. Instruction, 1866, 73.

Mr. Geo. W. Julian says that, "the Swamp Land Act [of Congress], owing to its loose and unguarded provisions, and its shameful mal-administration, has been fruitful of wide-spread spoliation and plunder."—Julian, 98. This general statement is applicable to at least two of the States under consideration in this paper.

whole, her lands have not produced all that they might (and those of what State have?), it is attributable largely to the disadvantage under which she labored by the terms under which she held them. Local management was the necessary characteristic of her system, and with it came into play local interests and desires. Many townships sold their lands at too early a day, and in numerous instances losses through the poor investment and careless handling of the proceeds reduced the ultimate fund. Had the State at the start, as it has since 1851, made the counties responsible for all losses in the township funds, this last evil would not have been serious. The tendency toward too hasty sales seems difficult of avoidance and has existed in various degrees in all the States. To determine the right moment for beginning the sales is no easy problem.

The method of investing the funds in Indiana differs so widely from that in Ohio as to suggest a comparison of the two. In Ohio the entire fund has been lent to the State. The money has long since been spent for various purposes, and the income of the fund is the interest paid by the State on this money, borrowed and spent. The interest must be raised by taxation. Thus the whole thing comes to saying that the people are taxed for the entire support of the schools. The fund is safe, and the income is sure and invariable. But though the money thus borrowed by the State may have lessened State taxation in the past, so far as the present and all future generations are concerned, the burden of supporting the public schools is no lighter than it would have been without a grant of land. In Indiana, on the other hand, the proceeds of the lands have been loaned on mortgage.[1] The advantages claimed for this system are that it enables any owner of real estate to borrow small sums of money readily, that the security is good, and that the people as a whole are not obliged to tax themselves to pay the interest on the fund. Its disadvantages are two. The liability

[1] I am not speaking of the "common school fund," which to a large extent has been borrowed by the State, as in Ohio, and annual interest paid thereon from the proceeds of taxation.

to losses through defalcation or poor investment, which formerly existed, is, as already shown, removed. One objection is that the income will vary as the current rate of interest rises or falls, for while the State may provide that this money shall be loaned at a certain rate, if the market rate is less loans cannot be made except at a lower interest. The other disadvantage is that the system is expensive, for it requires the attention of many officers and the keeping of many accounts. Each of these systems is successful when properly carried out, and each is strongly advocated. It is perhaps impossible to decide which is the better. Under the Indiana system the rate of interest earned by the fund has hitherto been higher than under the other, though this will not always be the case. In another place an account is given of a third system, adopted by some States, which appears to possess the good features of both of these, with few if any of their disadvantages.[1]

(*c*) ILLINOIS.

Though the sections for the use of schools in Illinois were reserved in 1804, they were made the subject of no legislation or supervision during the territorial days. When Illinois was admitted into the Union, in 1818, they were given to the State in the same terms as those employed in making the grant to Ohio. The Legislature was accordingly able within certain limits to exercise full control over them. In 1819 the General Assembly, following the precedent established by the other two States, adopted the policy of leasing the lands. The county commissioners were ordered to appoint three trustees for each township, whose duty it was made to survey, sub-divide, and lease the school section for ten years "on the best possible terms." All rent received was to be applied to the maintenance of schools.[2] The leases given by the trustees under this law were mainly improvement leases.[3]

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[1] *Infra*, 113.

[2] Illinois Laws, 1819, 107. At least one lot (forty acres) bearing timber was to be reserved on each section where there was timber.

[3] Ford, 78.

In 1825 a system of local taxation for the support of schools was adopted. At the same time it was determined that the rents arising from the school lands should be annually distributed among such of the inhabitants of the township as had contributed during the year, by tax or otherwise, to the support of a common school. The division was to be in proportion to the amount of tax or contribution paid by each.[1] This curious use of the income of the grant did not continue long, for the very name of a tax seems to have been so odious to the people of Illinois in those days that the whole law excited strong opposition.[2] In consequence of this feeling it was so modified in 1827 that no man was to be taxed for the support of any free school without his own written consent,[3] and the rent from the school section was to be distributed to the districts in the township, in proportion to the number of scholars.[4] The township trustees who had hitherto been appointed by the county commissioners were, after 1825, elected by the people.

In 1829 the General Assembly passed a law providing for the sale of school lands as soon as permission should be obtained from Congress. By this law the county commissioners were to appoint an agent in each township who, on the written petition of nine tenths of the freeholders, was to sell the lands at public auction for cash at any price not less than one dollar and twenty-five cents per acre. The proceeds were to be loaned by him at twelve per cent. interest, for not more than five years, on real estate worth twice the amount of the loan. The interest was to be paid to the school trustees, and by them distributed under the orders of the county court.[5]

Having waited two years for Congress to take the action required to bring this law into operation, the impatient Legis-

[1] Edwards, 195, 196.

[2] "This valuable law was in advance of the civilization of the times. . . . The poorest men . . . preferred to pay all that was necessary for the tuition of their children *or to keep them in ignorance*, rather than submit to the mere name of a tax by which their wealthier neighbors bore the brunt of the expense of their education."—Ford, 59.

[3] Edwards, 197. [4] Pillsbury, cxxix. [5] Illinois Laws, 1829, 150.

lature, in 1831, ignoring all question as to its authority, passed a second act providing for immediate sales.[1] Its terms were essentially those of the first law, save that the sale was to take place on petition of three fourths of the voters of the township, and that previous to the sale the trustee must appraise the land. This valuation, which could not be lower than one dollar and a quarter per acre, was to be the minimum price of the land.[2] The law permitted the proceeds to be loaned for five years at twelve per cent. interest to individuals on real-estate security, or for ten years at six per cent. interest to any association of citizens desiring to erect a school-house. In both cases the amount of single loans was limited. In 1833 the requirement of cash payments on purchases was repealed, and sales were thereafter made on credits of one, two, and three years, with interest.[3]

The advantages to be derived by selling the lands at so early a date are not obvious. The reasons urged in the Legislature by those who advocated the change were that unless the grants were immediately sold the children of that generation would derive no benefit from them, and that the lands, if longer leased, would be ruined "by being stripped of their timber."[4] To appreciate the absurdity of the latter reason one needs only to know that the greater part of the school sections, like the other lands in Illinois, was open prairie and bore no timber. Neither is there any strong evidence to show that they were not leasing as rapidly as the population would warrant, and that they were not furnishing a moderate income. Nor had Illinois experienced any such ills from leases as had been encountered by Ohio and Indiana.

Though these were the reasons given in the debate on the measure, it is impossible to shake off the suspicion that some other motive lay in the background.[5] If we can believe Governor Ford, that motive was a desire to please the lessees, who wished to purchase at low prices the lands which they

[1] Illinois Laws, 1831, 173.

[2] This provision for a valuation was repealed in 1833, and again enacted in 1835. [3] Revised Stat., 1833, 564. [4] Ford, 79.

[5] "These were the reasons assigned in debate, but they were not the true reasons for these laws."—*Ibid*.

were occupying.[1] To how great a degree such motives influenced the Legislature it is of course impossible to know, but some of the subsequent proceedings under the law go far to show that they must have had weight. The lands were in many instances deliberately undervalued by the trustees and sold for less than similar lands would have been sold by private parties.

In 1840 a law was enacted providing that where a majority of the inhabitants of any township were of the opinion that section sixteen had been valued too high, it should be revalued at any sum not below one dollar and a quarter per acre.[2] In the following year the whole legislation on the subject of schools and school lands was revised, and a general law enacted covering all points. By this law[3] sales in any township were to be made at public auction by the county commissioner on petition of two thirds of the voters. Though the lands were to be appraised before the sale, no minimum was established by the law, and in many cases exceedingly low valuations were made.[4] It is difficult to understand why the wise provision heretofore in force, that no lands should be valued at less than a certain fixed price, was omitted from this law. Certainly no good came from the change. By the new law the purchaser was allowed from one to five years in which to make payments. The proceeds of the sales were to be loaned by the county school commissioners at twelve per cent. interest, payable semi-annually, and debts due the school fund from the estate of a deceased person were given a preference over all debts except funeral expenses and the expenses of the last sickness. Thus far the State had been selling the lands without any authority from Congress,

[1] "I speak what I know when I say that the laws to sell school lands were passed to please the people who were settled on them, who wanted to purchase them at the Congress price, whilst the other inhabitants, being divided into little factions and thinking more of success at one election than [of] the interest of all posterity, and acting upon the principle that what is everbody's business is nobody's business, aided or suffered the mischief to be done."—Ford, 79.

[2] Illinois Laws, 1840, 85.

[3] Illinois Laws, 1841, 259–287.

[4] "In many cases the lands were systematically undervalued. The lands in Franklin County brought on an average but seventy cents per acre."—Pillsbury, cxxvii.

but in 1843 that body passed an act giving the authority on the same terms as in Ohio and Indiana. It also legalized and ratified all sales that had been made.[1]

The law of 1841 regulating the sales, was substantially the same as that now in force. Since 1847, however, the funds of each township have been loaned by the township treasurer instead of the county commissioner.[2] In 1845 the rate at which township funds might be loaned was reduced to eight per cent.,[3] and in 1849 raised to ten per cent.[4] In 1865 loans were authorized to be made at any rate between six and ten per cent.,[5] in 1867 at from eight to ten and, finally, in 1872, the limits were fixed at six and eight per cent. In 1872, also, a law was adopted authorizing loans of the funds to school districts on bonds issued for building purposes. All township funds have been loaned on real estate, on school bonds, and in the form of credit sales.[6] The investments have been almost uniformly safe, and few losses have occurred. The average rate of interest on the loans has been considerably higher than that paid by the State on educational funds which it has borrowed. "Township treasurers have always been held to strict account in the management of the school fund, the courts holding that nothing can relieve them from their obligation to safely keep and pay over such funds, but the act of God or of the public enemy."[7] Over ninety-nine per cent. of the lands have been sold, most of them at an early day, at an average of three dollars and seventy-eight cents per acre. The remaining 8,513 acres are under lease, and many of them are exceedingly valuable.[8]

Viewed purely with reference to the accumulation of a large permanent fund, the sales of the school lands were begun at too early a date. Had they been held under lease for fifteen or twenty years longer, their market value would

[1] 5 U. S. Stat., 600.
[2] Illinois Laws, 1847, 131, Sec. 50.
[3] *Ibid.*, 1845, 57.
[4] *Ibid.*, 1849, 166.
[5] *Ibid.*, 1865, 112.
[6] Pillsbury, cxxviii.
[7] *Ibid.*
[8] The leased school lands in Cook County alone are valued at two thirds the amount received from all those sold in the entire State. Exclusive of those in Cook County, the leased lands are worth about thirty dollars per acre.—Pillsbury, cxxvi, cxxvii.

have been more than trebled.[1] It is, however, strenuously maintained by some that a small sum available at an early day was of greater service to the people than a far larger sum a score of years or a generation later, and that, therefore, early sales were advisable.[2] While there is much truth in this, caution and discretion must be used in selecting the time for selling. The proper management of an educational trust fund, intended for the benefit of all future ages, cannot consist in so disposing of it as merely to satisfy the needs of the earliest beneficiaries. The interests of the vastly greater number who will arise are certainly entitled to careful consideration.

In 1852 the management of the swamp lands was entrusted to the counties in which they lay. It was enacted that after any county had sold enough to pay the expenses of reclaiming the rest within its borders, the remainder should be equally divided among the townships in the county for educational purposes, unless the county saw fit to use them for works of internal improvement.[3] Subsequent laws while varying the details of this arrangement have made no essential change in the main features of the plan. The lands have been controlled entirely by the local authorities. Good management has been the rule, and the proceeds over and above the expenses have been large. These have been added by the townships to the sixteenth section funds, and it is impossible to state the exact sum derived from them. The total township educational funds to-day are over a million and a half dollars greater than the proceeds of section sixteen, and it is asserted by State officials that the greater part of this increase has been derived from the swamp lands.[4] It is probable that at least a million dollars has been derived by the school funds from this source.

When Illinois became a State, three per cent. of the proceeds of the sales of public lands were granted to her as an

[1] As already stated, the average price received for those sold has been $3.78. Statistics show that in 1850 the price of improved land in Illinois ranged from $4 and $5 to $25 and $30 per acre, and that in 1857 the prices paid were still higher. Cultivated land *rented* in 1857 for from $1 to $3 per acre.—Gerhard, 401–405.

[2] Pillsbury, cxxvii.

[3] Illinois Laws, 1852, 178.

[4] Ills. School Report, 1881–2, cxxv.

additional endowment for education, one sixth of it to be bestowed on a college.[1] In 1820 Congress provided for the payment of this three per cent. to the proper State authorities as fast as the sales were made. The State was required to render to the Secretary of the Treasury an annual account of the disposition made of this money, in default of which future payments were to be withheld.[2] In 1821 the State Treasurer was authorized by the General Assembly to receive the moneys from time to time, and to deposit them in the State bank. The bank was to pay the treasurer six per cent. interest on such deposits.

What particular branch of educational work was to be promoted by five sixths of this fund had not been specified by Congress, but in 1825 the Legislature decided that it should constitute a common school fund. It was provided that five sixths of the interest paid by the bank should be distributed annually among the counties for school purposes in proportion to the number of white children of school age.[3] Whether any interest was actually paid by the bank I have been unable to ascertain.

The money remained on deposit until 1829, when the governor was authorized to borrow the whole fund for State uses, at six per cent. interest, the interest to be added to the principal at the end of every year, until the money should be refunded. The occasion for this diversion of the interest from its legitimate use lies in some obscurity. The State needed money, but there is no evidence that the taxes were increased to meet the needs. Indeed, there seems to have been a dread of taxes, and it is not improbable that the fund was borrowed at this low rate of interest in order to enable increased expenses to be met without taxation. The motive which inspired the whole measure, if we are to believe some writers, was creditable neither to the honor nor to the wisdom of the Legislature. It is charged that the transaction was a mere scheme of the legislators to win favor with the people, that the school fund was robbed, that a permanent debt carrying a large interest was unnecessarily saddled upon

[1] *Supra*, 36. [2] 3 U. S. Stat., 610. [3] Pillsbury, cxxxvi.

the State forever for the sake of relieving the people in earlier days from proper taxation, and that the average amount acquired by the State each year under this act was less than the amount now annually required to meet the interest alone.[1] The provision for adding the interest to the principal until the loan was repaid goes far to substantiate some of these charges. Not a dollar was required to meet the interest. The whole process consisted in making a few entries on the books of the State at the end of each year. So long as the State chose, if Congress would consent thus to be hood-winked, neither the principal nor the interest need be actually paid. Further, this money was borrowed, and the interest diverted from the schools in the very year when sales of section sixteen were first ordered. One ground for ordering those sales was alleged to be that a greater income was needed by the schools than was then accruing. Yet at the very same time the Legislature withheld the income of the three-per-cent. fund from the same needy schools. No explanation of this direct inconsistency has ever been offered. The whole scheme certainly has anything but a clean and honest appearance.[2]

[1] The following was written in 1847: "To relieve the State treasury from debt, the Legislature, to save the popularity of members by avoiding the just and wholesome measure of levying necessary taxes, passed laws for the sale of the seminary township, and for borrowing the proceeds of the sale and the three-per-cent. school fund; and for paying them out as other public moneys, and for paying an annual interest thereon to the several counties for the use of schools. By which means the debt of the State for these moneys alone amounted in 1842 to $472,493 [now $829,815]. Thus, as I conscientiously believe, was a township of land sacrificed at low prices, the school fund robbed, and a debt of near half a million of dollars fixed upon the State, rather than that the members would run the risk of not getting back to the Legislature, or of being defeated for some other office. This money was paid into the treasury in sums averaging $20,000 per annum. The annual interest now paid on it is $28,000 [in 1882, $49,799]. And so to save the popularity of the members of the Legislature, the State has received about $20,000 a year for about twenty-five years, by which she has become bound to pay $28,000 per annum forever; the difference against the State being the difference between twenty thousand dollars borrowed, and twenty-eight thousand dollars annual interest, and the difference between eternity and twenty-five years."—Ford, 79.

[2] A consideration of some further points in this connection is given in treating of the seminary lands in Illinois.—*Infra*, 133.

This temporary diversion of the fund from the cause of education, and the failure to render the annual report to the Secretary of the national treasury, caused the United States to withhold further payments of the three per cent. for several years. A voluminous correspondence ensued between the officers of the two governments. Finally, in 1831, Congress repealed the law requiring the rendering of these accounts,[1] and the payments were thereafter made annually to the State. In 1835 the Legislature ordered that all interest which had accrued to January 1, 1834, should be added to the principal, and that thereafter the interest at six per cent. should be distributed to the several counties for the support of schools in proportion to the number of white children in each county.[2] From that year until the present time this distribution has been made. In 1872, however, the word "white" was dropped from the law.[3] The payments to the State were made as the lands were sold by the national government until 1863, when the last public lands in Illinois were disposed of. The total amount of this three-per-cent. fund received from the government, as shown on the books of the State, is $712,745.34.[4] Five sixths of this, the amount devoted to common schools, is $593,954.45. But there was added to the fund accrued interest to January, 1834, amounting to $19,408.51, making the total fund $613,362.96,[5] which exists as a State debt bearing six per cent. interest until the principal shall be paid.

This three per cent. has been paid only on lands sold for cash. Many public lands in Illinois have been located by military land warrants. Within a few years the State has made the claim that she is entitled to the percentage on these lands the same as if they had been sold for cash. She petitioned for a writ of mandamus to compel the Commissioner of the United States Land Office to make a statement of the account for the purpose of obtaining the sum

[1] 4 U. S. Stat., 431. [2] Illinois Laws, 1835, 22.

[3] One tenth of the income was appropriated to the Institution for the Deaf and Dumb from 1839 until 1872.—Pillsbury, cxxxvii.

[4] Pillsbury, cxxxvii. The figures as taken from the books of the United States are slightly less. See Document A, 238. [5] Pillsbury, cxxxvii.

due the State from these lands. The United States Supreme Court has recently denied the petition, and decided that lands located with bounty warrants are not within the scope of the act granting the three per cent.[1]

(*d*) MICHIGAN.

While the legislative power in the Territory of Michigan remained, in accordance with the provisions of the ordinance of 1787, in the governor and judges, no care was given to the subject of the school lands.[2] In 1824 the people of the territory elected their first local Legislature. In his message to that body the Governor of the territory called attention to the school reservation, and suggested "its immediate preservation and ultimate application in conformity with a well-digested system." He intimated, however, that it was a question whether—without the express sanction of Congress—the territorial Legislature had authority to do any thing more than protect the lands from waste.[3] In consequence of this suggestion the legislative council addressed a memorial to Congress asking for authority "to take the charge and management of the said lots."[4] In 1828 Congress granted the prayer of the memorial, and authorized the Governor and council to lease them for any period not exceeding four years[5] in such manner as to render them productive and most conducive to the object for which they were designed.[6]

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[1] 16 Chicago Legal News, 214. The volume of official reports containing this decision is not yet issued.

[2] No surveys of the territory had been made until after the War of 1812, and until then even the location of sections sixteen was not known.

[3] Journal Legislative Council, First Sess., First Council, 12.

[4] *Ibid.*, 88.

[5] The reasons for this short period are given in the report of a committee in Congress as follows: "Strong doubts are entertained of the propriety of authorizing a territorial Legislature to grant leases for a term of time beyond [that for] which the territorial government will probably exist. And in conferring the authority asked for upon the Legislative Council of Michigan, it is believed that it should be done with a limitation to a short period of time."—State Papers, 4 Public Lands, 762.

[6] 4 U. S. Stat., 314.

In the same year a territorial law was adopted empowering each township having twenty electors to elect trustees, who should lease the school section for not more than three years, the proceeds to be applied "towards the pay of school teachers in said township."[1] It is worthy of note that this earliest law of Michigan contained the wise provision not found in the laws of the other States, that no resident upon or lessee of any school section should be eligible to the office of trustee. In the next year more definite provision was made for the distribution of the proceeds of rents, and the Governor was authorized to appoint a Superintendent of Common Schools to take charge of the school lands in all townships where trustees had not been elected. His authority was confined to protecting them from waste and injury. All trustees were to report to him annually the condition of their school lands, rents, etc., and he was to report to the council.[2] No Superintendent was appointed, but the law is noteworthy as the first in the whole Northwest Territory providing for one central authority to manage all the school lands. It foreshadowed the eventual departure from the system in vogue in the three oldest States of the territory—a change from local to central management. In 1832 the duties of the township trustees were transferred to the township commissioner of schools, thus doing away with one needless set of officers.[3]

In the general revision of the laws in 1833 the powers of the commissioners remained unaltered. The provision for a Superintendent of Common Schools was revived, and he was given the power to lease school lands in any township where no commissioners were elected.[4] Still the Governor did not appoint any one to the office, perhaps because the salary (twenty-five dollars a year and official expenses) was not sufficient inducement to any one to accept the position.

[1] 2 Territorial Laws, 695.

[2] 3 Territorial Laws, 950. In addition to the former provisions for leases, these commissioners were by this law authorized "to lease . . . or to manage and conduct the same in any other way they shall consider best calculated to enhance the value thereof,"—that is, to give improvement leases.

[3] *Ibid.*, 774, 775.

[4] *Ibid.*, 1012–1020.

During these years many of the school lands were leased by the township authorities and produced small incomes.

The movement toward a State government began in 1832, and finally culminated in 1835, in advance of any authority from Congress, in the meeting of a convention and the adoption of a State constitution. An account of the subsequent negotiations and the action of Congress, so far as concerns the question of education, has already been given.[1] It is only necessary to repeat here that the sixteenth sections were granted in 1837 "to the State for the use of schools." This change from the terms of the ordinance of 1785 and the act of 1804 enabled the Legislature to assume the entire management of the lands and funds, without the intervention of any local authorities. It also obviated the necessity of keeping separate the fund of each township, and permitted the whole of the proceeds to be consolidated into one State fund. It removed all occasion for a numerous crowd of local officials, greatly simplified the management of the trust, and lessened expenses. The question of the right of Congress thus to make a change which deprived the inhabitants of the individual townships of the exclusive avails of their own school section was often debated in the early days of the State, but is hardly worth discussion now.[2]

The constitution of 1835 provided that "The proceeds of all lands granted by the United States to this State for the support of schools, which shall hereafter be sold or disposed of, shall remain a perpetual fund, the interest of which, together with the rents of all such unsold lands shall be inviolably appropriated to the support of schools throughout the State."[3] It also provided for the appointment by the Governor of a Superintendent of Public Instruction whose duties should be defined by the Legislature.[4] The first Legislature passed an act under which the Superintendent was given immediate charge of all lands in townships where no commissioner had been elected.[5] He was also instructed to draw up and report to the next Legislature (1) a system for the organization and establishment of common schools

[1] *Supra*, 38. [2] See Shearman, 15. [3] Article X., Sec. 2.
[4] Article X., Sec. 1. [5] Mich. Laws, 1835–6, 49.

and a university; (2) an inventory of all educational lands and property, their condition and location; and (3) his views relative to the further disposition of the lands. On the same day that this act was passed the Governor nominated to the office Rev. John D. Pierce, to whom more than to any other man is due the excellent school system of Michigan.

In pursuance of his instructions the Superintendent in January, 1837, submitted an elaborate and comprehensive report covering all the subjects referred to him. So much of the report as touches upon the management of the land grant demands attention. He recommended that the charge of all the lands and the investment of the moneys arising from them should be given to the Superintendent, subject to legislative direction. Starting with the assertion that "that disposition of the school and seminary lands will be the wisest and best which will ultimately yield to the State for the support of public schools the greatest amount of revenue," he discussed the relative advantages of leasing and selling.[1] His conclusion was that the lands should be sold "gradually as the wants of the country and a sound discretion may seem to warrant." If by this it was also meant that unsold lands should be leased, as far as practicable, on short leases, the general theory of the Superintendent was wise. Its weak point lay in the fact that the "sound discretion" presupposed is too rare a quality to afford any absolute security that it will be exercised when needed.

Whether the immediate sale of any portion of the lands was expedient rests upon practical considerations. The country was then in a period of speculation. Immigration was large, prices were high, and real estate was selling rapidly. These facts undoubtedly influenced the views of the Superintendent. Then too, in some of the more thickly settled portions of the State the school lands had under previous leases received some degree of cultivation, and under the existing demand were sure to command high prices. On the whole it was perhaps wise to dispose of a limited amount of the lands, and to lease the remainder until they should reach a value at which sound wisdom would advise their sale.

[1] Senate Journal, 1837, Appendix, Document 7.

The detailed plan presented by the Superintendent seemed likely, if adopted, to produce a large ultimate fund. He proposed that a minimum price of five dollars per acre be placed upon the land and that only a limited amount be put upon the market at that time.[1] He would invest the proceeds by loaning them to such of the counties as desired to borrow, in sums of five or ten thousand dollars at seven per cent. interest, any surplus above the needs of the counties to be loaned to individuals on mortgages.[2]

The Legislature studied this report with great care, and approved the main features of the plan proposed. In March, 1837, a law was adopted covering the whole subject. The Superintendent of Public Instruction was authorized to take charge of all educational lands in the State and to make sales to the amount of one and a half million dollars, at public auction for not less than eight dollars per acre.[3] Loans of the proceeds were to be made as suggested by the Superintendent, and any unsold lands were to be leased for not more than three years. The income was to be distributed among the townships of the State in proportion to the number of children between five and seventeen years of age.[4] The law also required the Superintendent to make in each annual report a statement of the condition of the university and school funds.[5] During the next nine months over thirty-four thousand acres were sold at an average price of a little less than twelve dollars per acre.[6]

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[1] *Ibid.*, 70.

[2] His estimate of the amount and value of the lands is interesting for purposes of comparison. Of the 1,148,160 [1,067,397] acres he considered one fourth as waste land. The remainder in the lower peninsula he graded into several classes, worth from four to fifteen dollars per acre respectively, while those in the upper peninsula "will bring one million dollars." The total estimated value was $4,850,000. He cautiously added: "Much must depend on the adoption of wise councils [*sic*] and good management."—*Ibid.*, 71–73.

[3] Purchasers were to pay one fourth in cash and the remainder at stated periods, with interest. As amended three months later one tenth only was to be paid in cash and the balance in nine annual payments with interest. Security was to be taken for future payments when it was deemed necessary.—Mich. Laws, 1837, 316. [4] *Ibid.*, 209. [5] *Ibid.*, 213.

[6] Senate Docs., 1838, 43, 44. The Superintendent's "safe estimate" this year was that the ultimate fund would be $5,983,264.

This auspicious beginning afforded no premonition of the disappointment in store for those who believed that a happy and permanent solution of the land problem had been found. The law had not been in force a year before the first attempt was made at its overthrow. A petition was presented to the Legislature in 1838 from the inhabitants of one township in the State praying for a reduction of the price of lands in that township. The ground of the plea was simply that at the established price the lands would not sell immediately, whereas their speedy sale and occupation was a matter of material interest to the township. No mention was made of what might be for the advantage of the schools! No such minor matter was thought of by the good people who signed the petition. The Legislature declined to inaugurate a system of special laws for the benefit of particular localities, and refused to grant the petition.[1] At this session the Legislature repealed the law authorizing loans to individuals in the evident expectation that the counties would desire to borrow the whole.[2]

Troubles far more serious soon arose. The sales decreased during the next two years, and the average price received was not far above the minimum established by law.[3] Many of the earliest purchasers also failed to pay the instalments of purchase money and interest due under their contracts.[4] A single cause was responsible for all these things. The financial embarrassment following the crisis of 1837 was general throughout the country. Prices had fallen and every one had difficulty in meeting his obligations. The Legislature in 1839, at the suggestion of the Governor, extended the time for the payment of instalments of purchase money due under previous contracts.[5] This act, suggested by good motives, was the beginning of a long line of relief

[1] The reasons given in the Legislature for denying the petition were that though those particular lands might not then command the legal minimum, they soon would, and that the township must "submit to a temporary inconvenience which will ultimately be productive of the general good."—House Documents, 1838, No. 21.

[2] Mich. Laws, 1838, 233.

[3] Senate Documents, 1839, 232; 1840, I., 22, 23.

[4] Senate Documents, 1839, 230.

[5] Mich. Laws, 1839, 13.

legislation which ended in dire disaster to the school funds. In the next year the Legislature supplemented it by extending the time for the payment of interest then due on the land contracts, thereby declaring that purchasers should not yet forfeit their lands even though they made no payments for a time.[1]

The other disappointment—the striking decrease in the sales—was a direct result of the financial depression, but was considered by a few members of the Legislature in 1839 as affording ground for a reduction in the established price. Though the project was urged by numerous petitions, it found little favor in the Legislature.[2] A year later the matter again came up. Another instalment of petitions was forwarded to the Legislature. This time, however, the question was of a reduction in the price not only of unsold lands, but also of those which had been sold and on which partial payments had been made. It is needless to say that this last scheme was vigorously urged by the purchasers. The committee to whom the projects and petitions were referred, acknowledged that there had been a great depreciation in the value of land, but thought it inexpedient to reduce the price of any unsold land. With reference to the lands already sold under contract they denied that it was properly within the power of the Legislature to afford relief to those who had voluntarily though perhaps unwisely purchased at high prices.[3] The entire project failed for the time, though its advocates were many.

In 1840 no lands were sold for more than the minimum price, and it appeared that nearly one third of those previously sold had been forfeited for non-payment of the instalments

[1] Mich. Laws, 1840, 138.

[2] From the report of a committee I find that the eminently sound reasons for making no reduction were that in the settled parts of the State even the poorer lands were selling for more than the minimum price, that those unsold would soon be worth that price, and that a reduction under such circumstances would be an injustice to the schools. Still the committee took the ground only that a reduction "at present" would be unadvisable, a position which boded evil in the future.—House Documents, 1839, 188.

[3] House Documents, 1840, II., 529, 530.

due.[1] The Superintendent of Public Instruction now recommended that the price of unsold lands be reduced to five dollars per acre.[2] If immediate sale was the only object to be attained, the price was undoubtedly too high. The Superintendent had, however, several years before correctly stated that the true policy was that which would ultimately produce the greatest amount of revenue. The low price and the small demand for real estate from 1838 to 1841 was mainly a temporary result of the panic of 1837. When the depression had passed, prices again rose. Was this reduction then either necessary or expedient? The Superintendent went even further in his suggestions. While he did not openly advocate relief to those who had already purchased, he expressed his opinion "that a reduction in many cases would be both equitable and just."[3] Assuming that some such relief measure was likely to be adopted, he contented himself with suggesting points to be covered by it, instead of showing that it was no part of the duty of the Legislature to relieve the embarrassments of purchasers at the expense of a trust fund.

With these recommendations before them, reinforced by numerous petitions, the Legislature lost its firmness. The minimum price of unsold lands was reduced to five dollars.[4] For the relief of past purchasers they enacted that any one who by the end of the next year should have paid twenty per cent. of the purchase money under his contract and all interest then due should not be required to pay any further instalment of principal, but simply annual interest on the unpaid balance.[5] By suspending the payments of principal it was hoped that the interest would be paid without trouble or delay. These hopes were destined never to be realized. The purchasers having gained ground at nearly every move,

[1] Senate Documents, 1841, I., 322, 375, 389.

[2] "That the minimum price of unsold lands is too high there can scarcely remain a doubt. Time, which corrects opinion, has shown that five dollars per acre for school lands is as high as they can be expected to sell."—Senate Documents, 1841, I., 320. [3] *Ibid.*, 321. [4] Mich. Laws, 1841, 157.

[5] *Ibid.* To all future purchasers the same privilege was extended, save that they must pay twenty-five per cent. of the purchase money and interest on the balance.

were determined to accept nothing but a complete surrender to their demands.

In 1841 a new Superintendent of Public Instruction was appointed. His first report showed painful arrears in the payment of both principal and interest, and developed the fact that many who, under the terms of their contracts, had long since forfeited their lands, were still in undisturbed possession of them, though according to the Superintendent they never intended "to pay another dollar either of interest or principal."[1] In view of all these facts and the precedent established by relief measures already noted, he urged either a rigid enforcement of the implied intention of the relief law of the previous year by declaring forfeited all lands on which twenty per cent. should not have been paid by the date fixed in that law, or that the Legislature should adopt a system of graduated reduction of prices on all lands already sold.[2]

The prayers for relief again poured in, and the time had finally come when this trust fund was to be sacrificed to the clamors of interested parties, on the sole and untenable ground that "the State had driven a hard bargain with the parents of its wards,"[3] which it would be "legal extortion" to enforce.[4] A law was enacted in 1842 providing that the associate judges should, on application of the purchaser, examine any school land purchased at eight dollars an acre or over, and appraise its value in its actual condition at the time when it was first bought. The difference between this appraised value and the contract price was to be credited to the purchaser.[5] The only proviso was, that the reduction should not be more than forty per cent. of the price originally named in the contract. This remarkable law permitted every one who had purchased school lands between 1837 and 1841 to obtain his title by paying a lower price than he had voluntarily offered. Under its provisions the school fund was lessened over one hundred and seventy-five thousand dollars. The Legislature was, indeed, generous. The law reminds one of the provisions in Ohio by which lessees were

[1] Joint Documents, 1842, 293. [2] *Ibid.*, 294. [3] Smith, 18.
[4] Gregory, 7. [5] Mich. Laws, 1842, 44.

permitted to purchase lands at old and low valuations. All that the most tender-hearted and weak-headed sympathy could demand would have been yielded by permitting past contracts to be modified according to the true value of the land at the time of appraisement.[1]

The victorious purchasers hastened to take advantage of this munificent gift, and many of them boasted openly of the bargains they had made at the expense of the schools.[2] In the first year alone 26,117 acres, or one third of the amount sold up to that time, which had originally brought an average of over eleven dollars per acre, were reduced about thirty-six per cent. in price, and purchasers were credited over one hundred thousand dollars by virtue of the reduction.[3] By January, 1843, the amounts originally contracted to be paid had been reduced by forfeitures and relief legislation from $711,000 to $474,000,[4] and the hopes entertained in past years were fast vanishing.[5] A rigid provision for forfeiture in cases of non-fulfilment of contracts, adopted in 1842, brought prompter and fuller payments of principal and interest. The harm had, however, been done, and, dismayed by the results of the "retrospective" reduction of prices, the friends of education indulged in vain regrets. Too late did the evils attendant upon all relief legislation make themselves known.[6] In later years this page

[1] The law also permitted any previous purchaser to surrender any portion of the land he had bought, and retain the balance at the original price per acre. All previous payments were to be applied only in the part retained. This of course threw back upon the State only the poorest lands, and enabled the purchasers to pick out choice pieces which, taken by themselves, were unquestionably worth more than the contract price.

[2] Joint Documents, 1843, 220. [3] *Ibid.*, 211. [4] *Ibid.*, 219.

[5] "The seventy-eight thousand acres of school lands, once sold at an average price of nine dollars per acre, . . . have dwindled to sixty-nine thousand at an average price of less than seven dollars."—*Ibid.*

[6] "The too high prices of other years, sad reverses of fortune, and the consequent failure to fulfil contracts, encouraged, too, beyond any doubt, by hopes of annual relief, have placed our educational funds in their present condition. The first relief-precedent has occasioned all the mischief; for subsequent legislation has grown out of that. If the condition of forfeiture wisely put in the contract had been rigidly enforced, the consequences to individuals would have been less disastrous, and public disappointment less tantalizing. Certainly the forfeiture would at least have ensured prompt settlements."—*Ibid.*, 220.

from the history of the school fund has been screened from close observation, and the matter so glossed over that the whole transaction is made to appear a simple act of justice, the omission of which would have been a blot upon the honor of the State.[1]

Another cloud now loomed up. On some of the loans made to counties and to individuals, no interest had been paid for some time, and it began to appear that the little fund left from the sacrifice was destined to further diminution.[2] There was also found an apparent deficiency in the funds, owing to the looseness with which the accounts had been kept.[3] No charge of dishonesty was made, nor could any such accusation have been maintained for a moment. But the past losses, and the probability that others would occur, drew attention to this phase of the trust-fund problem.

From the organization of the State the Superintendent of Public Instruction had been given charge of two distinct kinds of work. Appointed for his ability as an educator to look after the workings of the schools, he was also obliged to assume the management of a vast body of lands, to recommend laws, to sell lands, and to invest funds,—a work requiring the experience and constant care of a thorough business man. To attend to either of these two duties would have taxed any man; to fulfil both properly was impossible. In the very first year after the office was created, the Governor had suggested the separation of the two lines of labor, and every succeeding Governor in every annual message had advocated the same change. The suggestion had been made at first on the ground simply that the duties imposed on the Superintendent were too arduous, but in 1843 the tone was changed, and the intimation was plainly given that the fund would be managed more carefully if entrusted to other hands.[4] Minor evils undoubtedly existed, for which neither

[1] See, for example, the elaborate defence of the measure in Gregory, School Laws of Michigan, 1859, 6, 7.

[2] "A part of the money already received, it is feared, has been loaned upon insufficient security, and losses from other causes are apprehended."—Governor's Message, Joint Documents, 1843, 12.

[3] *Ibid.*, 216.

[4] "It is believed that the condition both of the common school fund and the

the Superintendent nor the system were directly responsible,[1] but the chief cause of much that had gone wrong was the law imposing upon the Superintendent, whose entire attention was needed in setting in motion an excellent school system, an additional task for which he was not expected to have special qualifications, and certainly had little time.

The Legislature finally recognized this, and in 1843 created the office of Commissioner of Lands, to whom was entrusted the management of the school, university, and other State lands. The books of the Superintendent of Public Instruction were turned over to him, and he was to conduct all sales of lands. Payments of principal and interest on the school or university fund were thereafter to be made to the State Treasurer.[2] A system of accounting between the Auditor, Treasurer, and Commissioner was adopted, which served as a mutual check and preventive of error.

The Commissioner devoted himself arduously to his work. The accounts were straightened out as far as possible, and the records of past transactions put in proper form. The condition of the unsold lands was also inquired into and the discovery made that many of them had been occupied for years by "squatters" who paid no rent. Few, if any, lands had been leased by the Superintendents. In view of these facts the Legislature authorized the Commissioner to instruct the supervisors of the different townships to lease any unsold, improved lands from year to year.[3] In order better to protect the State in case of forfeitures of contracts, all future purchasers were required to pay one fourth of the purchase price at the time of purchase, instead of one tenth as had

university fund might be improved, and their productiveness increased by committing their care to some other officer than the Superintendent of Public Instruction. . . . The interests of the State are not sufficiently protected by existing enactments in relation to the fiscal duties of the Superintendent. . . . The Superintendent makes important sales, and from time to time receives large sums of money, as well of principal as of interest, while no documents exist accessible to other State officers by which the condition of his accounts can be ascertained. Years and years may elapse before even his successor can know his defaults."—Joint Documents, 1843, 14–15.

[1] *Ibid.*, 223, 224. [2] Mich. Laws, 1843, 44–52. [3] Mich. Laws, 1844, 86, 87.

been required before. The improvements on any unsold lands were thereafter to be appraised by the township supervisors, and the minimum price of such lands was to be increased accordingly.[1]

In 1843, and again in 1844, numerous petitions were presented asking for a further reduction of the price of all unsold educational lands. The project was urged in a most plausible form, but the Legislature did not yet permit itself to make another move in this direction. Many of the members were determined that no rash step should be taken to hasten sales when by a little delay the lands would be rapidly taken at the existing prices. They looked upon the rights and privileges of succeeding ages as equally sacred with those of their generation.[2] How soon were these correct but unpopular notions overridden!

In 1845 the Commissioner recommended that the State internal-improvement warrants be received in payment for school lands.[3] As these warrants bore interest the adoption of the suggestion would have enabled the State to redeem its outstanding obligations while it ensured to the schools an income on the fund. This scheme was not formally adopted, but the Treasurer was authorized to pay seven per cent. annual interest on certain treasury notes and scrip taken in payment for school lands.[4] The arrangement was designed to be only temporary,[5] but through it the State drifted into the policy of borrowing the school funds for its own use, and paying annual interest from the treasury upon the loans. At about this time further loans to the counties were suspended.[6]

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[1] *Ibid.*

[2] "It would be far better to hold the lands and thus secure increased value to the fund than to sell them now though we might derive [a greater] amount of interest. In one case we have the increase as a permanent fund for all future time. In the other it is received as interest and distributed throughout the State as fast as received. . . . While we look out well for to-day we must take care that we do not endanger the rights and privileges of those who are to follow us."—From the Report of the Committee on School Lands. House Documents, 1844, No. 10.

[3] Joint Documents, 1846, No. 3.

[4] Mich. Laws, 1845, 148.

[5] Senate Documents, 1846, No. 6.

[6] Of the early loans made to individuals about twelve thousand dollars were never repaid, nor was the interest met. Though the State held mortgages as

By 1850 the State had borrowed the entire primary-school fund and in the new constitution adopted in that year, this procedure was formally accepted as a permanent policy, and the specific taxes levied by the State were applied to the payment of the interest.[1] Whether it is a wise policy for a State which does not need to borrow, to adopt this method of investing its school fund, thereby necessitating perpetual taxation to meet the interest, is a question well worthy of consideration.

In 1846 the minimum price of school lands was reduced to four dollars per acre[2] in the face of a direct showing that the sales at the existing price were increasing each month.[3] The motive for this act is locked in the breasts of those who passed it. There were no new petitions asking for it, and in the following year, before the act came into effect, the Commissioner of the Land Office, whose opinion was based on practical knowledge of the subject, declared that if the price were again raised to five dollars the interests of the fund would be essentially promoted.[4] This protest of the Commissioner was of no avail and the law went into effect.

Since that time only slight changes have been made in the law, though attempts to effect a reduction in price have not been wanting. In 1846 all mineral lands belonging to the schools were reserved from sale,[5] and were offered on three-year leases.[6] In 1863 they were placed on sale at a valuation made by the Governor and State Treasurer.[7] Since 1873 one half the purchase money has, in every sale of school lands, been required at the time of purchase, and for any timber land the Commissioner may require full cash payment at the time of sale. Sales have increased steadily since 1846 with few interruptions, and about two thirds of the lands have been disposed of. As they have all been offered at public auction those still held by the State are, under the

security for the loans, no steps were taken to foreclose them. With the exception of one or two, cancelled by order of the Legislature, the mortgages stand to-day uncancelled on the records.—Smith, 18.

[1] Constitution, 1850, Article XIV., Sec. 1.
[2] Revised Statutes, 1846, 239.
[3] Senate Documents, 1846, No. 23.
[4] Joint Documents, 1847, No. 3.
[5] Mich. Laws, 1846, 92.
[6] *Ibid.*, 274.
[7] Mich. Laws, 1863, 277.

law, subject to private entry at four dollars per acre. The good features of the management of the school sections in Michigan must be obvious; the instances of bad laws and of lax enforcement of good laws have been sufficiently indicated. If the ultimate fund is likely to be much smaller than it should be, the people of Michigan may console themselves with the reflection that many of the older States have fared even worse.

When the swamp lands were granted in 1850 the authorities of Michigan did not consider them valuable or anticipate any revenue from them above the expense of drainage. Accordingly a law was adopted providing for their sale at seventy-five cents an acre, the proceeds of each sale to be used in reclaiming additional lands.[1] As the nature and amount of the grant became better known, it was seen that a large sum of money ought to be realized from it. For several years the successive Governors urged the Legislature to change the law of 1851, raise the price of the lands, and apply some portion of the proceeds to educational uses.[2] These suggestions bore no fruit for several years, but finally in 1857 the previous law was repealed and the lands were ordered sold at a minimum price of five dollars per acre, the purchaser to assume the task of drainage. Of the net proceeds, seventy-five per cent. was to "constitute a part of the primary school fund of the State," while the remainder was to be used as a fund for reclaiming unsold lands. The portion given to the school fund was to be borrowed by the State at seven per cent. interest, for the purpose of paying off other State indebtedness.[3] Why these "wet and overflowed" lands should have been considered worth five dollars an acre, and the school lands valued at but four, is past comprehension.

The educational provision met with hearty approval

[1] Mich. Laws, 1851, 322.

[2] The Agricultural College, the Normal School, and the primary schools were all suggested as proper beneficiaries of the fund. Governor Bingham sought to avoid the co-educational problem by proposing the endowment of a college for the education of young ladies.—Joint Documents, 1856, No. 1.

[3] Mich. Laws, 1857, 234.

throughout the State, but defects were found in the law which prevented the Land Commissioner from making any sales under it.[1] The Commissioner argued that the price had been fixed too high,[2] and the Governor suggested that the proceeds be given to the infant Agricultural College, instead of the primary schools.[3] The law was amended in 1858 and the price reduced to one dollar and a quarter per acre, while only fifty per cent. of the moneys received from sales was to go to the school fund, and this the State was to borrow at five per cent. interest.[4] Though these provisions were far less generous than those of the year before, a large fund would have resulted had this law remained unmodified. From the six million acres the schools would have received about three million dollars, after deducting expenses. Thus far the share of the schools has amounted to about three hundred and sixty-five thousand dollars,[5] and ninety-five per cent. of the lands have been disposed of.[6]

The causes for this enormous shrinkage from the original estimate are simple. The law of 1858 provided that one half the proceeds of cash sales should be used as a school fund. Very few of the lands, however, have been sold for cash, while enormous quantities have been disposed of in such ways that no moneys have entered into the transaction, and in consequence no benefit accrued to the school fund. The schools had no prior or irrevocable claim to the benefit of the grant. No constitutional provision or act of Congress secured any portion of it to the cause of education. It was entirely within the power of the State, by a simple repeal of the law, to use the lands for other purposes not inconsistent with the terms of the grant. So long, however, as the law remained on the statute-book, its spirit as well as letter should have been observed. If the lands not sold for cash had been made to contribute to the material welfare of the State in any degree commensurate with their value, there would be no ground for

[1] Joint Documents, 1857, No. 4, pp. 9, 10. [2] *Ibid.* [3] *Ibid.*, No. 1, p. 3.

[4] This fund is known as the Primary School five per cent. Fund to distinguish it from that derived from the sixteenth sections.

[5] Report Supt. of Pub. Instruction, 1881, xviii.

[6] Circular No. 1, State Land Office, 1883.

complaint. It is, however, a notorious fact that thousands of acres have been practically thrown away. Some of the lands have been used to pay for various needed works of internal improvement, some have been disposed of under a State homestead law, but from a great part of them speculators and private parties have derived more benefit than the State. The method by which this has been accomplished is as simple as it has been disastrous. Wagon roads and ditches were needed in many parts of the State, and the Legislature devised the scheme of paying for them with swamp lands. The construction of a road would be authorized, to be paid for in scrip redeemable in swamp lands at one dollar and a quarter per acre. The recipient could either locate land with the scrip, or could sell the latter to persons who desired to purchase lands. As the land thus located was not a cash sale on the part of the State the school fund under the law derived no benefit from the transaction. Further, as time progressed, so many of these roads were constructed and so much scrip was thrown upon the market, that its value depreciated, often falling to seventy, sixty, and fifty cents on the dollar, and at no time for many years past selling at par, since the supply has always been in excess of the demand. The result has been that when any one has desired to purchase a tract of swamp land, instead of paying cash to the State at the established price per acre, he has bought scrip from some broker at the current price, and with it located his land. In this way he has been enabled to obtain good land at from sixty-five cents to one dollar an acre. Hardly one tenth of the entire grant has been sold at cash sale by the State, so that the school fund has in reality received the proceeds of only about one twentieth of the swamp lands.

As already stated, if Michigan had received benefits in the shape of roads and other improvements equal to the value of the land disposed of, the mere fact that the schools have received so little aid would be no cause for complaint. But the actual state of the case is far otherwise. While some of these improvements have been needed and have been honestly constructed, it is not safe to investigate the majority of

them lest symptoms of jobbery be detected. Dozens of roads have been ordered constructed where there was not at the time, and might not be for a decade or two, any need for them. Then when it came to the construction high prices have been paid for miserably built roads, some of which were in ruins almost before the scrip was located which was issued to pay for them. There can be no question that there has never existed in Michigan another such fertile field for the speculator to labor in, and the opportunity has not been neglected.[1] Let no one infer that the Legislature has been corrupted. At the worst it has only been hoodwinked. The fault lies with the system which permitted lands to be disposed of by such methods. Further, the land was worth far more than one dollar and a quarter an acre. Much of it was pine land worth to-day in the original state as many dollars per acre as it cost the purchaser cents.[2]

In 1869 certain bodies of swamp land, then just patented to the State, were offered for sale at eight dollars an acre. The price of such of these as remained unsold was reduced two dollars at the end of each six months until it reached two dollars an acre, which was fixed as the permanent price.[3] All other unsold swamp lands are offered at one dollar and a quarter per acre.[4]

(*c*) WISCONSIN.

From 1818 until 1836 the region of country now known

[1] The following is a simple illustration of the methods employed. A and B desire to earn an easy penny—perhaps two. A discovers a route where he thinks a new road can be built, and he interests himself in getting the people of the locality to petition the Legislature to order it built. The act is passed. B steps in, gets the contract, builds a poor road, receives pay for a good one, and A and B divide the scrip. Perhaps they even seek for an opportunity to repeat the operation.

[2] A gentleman who is perhaps as familiar with the subject as any one in Michigan informed the writer not long since that, in his opinion, the State might have derived fifty million dollars from the grant.

[3] Mich. Laws, 1869, 164.

[4] *Ibid.* Compare the excellent record of Wisconsin in handling her swamp lands.—*Infra*, 114. For the history of the saline lands of Michigan see page 154, note.

under the name of Wisconsin formed a part of the Territory of Michigan. All laws adopted by the territorial authorities, between those dates, were applicable to the entire country between the Detroit River and Lake Huron on the east, and the Mississippi River on the west. Such of these as pertain to the school lands have already been mentioned.[1] In 1836 the separate Territory of Wisconsin was created, but all previous laws were to remain in force until changed by the legislative authority of the new Territory.[2] In the first territorial Legislature of Wisconsin a resolution was offered asking Congress to give to the Territory, in place of the sixteenth sections, their cash value at the government price of land. Fortunately the wisdom of the Legislature prevented the passage of this foolish proposition. In 1837 provision was made for the election of township commissioners of schools, who in addition to other duties were to lease the school lands. In 1839 a law was enacted "to establish common schools," providing among other things for the election of school inspectors in each township or school district, whose business it should be "to lease the school lands in their respective towns or districts for a term not exceeding three years," the rents to be applied toward the support of local schools.[3] In the following year the powers of the inspectors over school lands were again transferred to the township school commissioners,[4] and the period of the leases was cut down to two years,[5] only to be extended to four years in 1842.[6] In all these cases the rents were to be applied to the support of schools in the townships in which they accrued. Under this law lands were leased until the admission of the Territory as a State in 1848.

By the constitution of the State and the subsequent agreement of the United States[7] the common schools received as an endowment, in addition to sections sixteen, five hundred thousand acres of land,[8] and five per cent. of the net proceeds of all public lands in the State, sold after its ad-

[1] *Supra*, 87. [2] 5 U. S. Stat., 10. [3] Wis. Stat., 1839, 137.
[4] Compare Mich. Laws, 1832; *supra*, 87. [5] Territorial Laws, 1840, 80.
[6] Territorial Laws, 1842, 45. [7] *Supra*, 40.
[8] In most other States these had been granted for internal improvements.

mission. The proceeds arising from these and a few other sources were to constitute a perpetual fund of which only the income was to be used for the purposes specified.[1]

The people of Wisconsin did not repeat the error committed in Michigan of imposing upon the Superintendent of Public Instruction the care and management of the lands and funds. Leaving to that officer the supervision of educational matters, the constitution entrusted the sale of the school and university lands and the investment of the proceeds to a board of commissioners consisting of the Secretary of State, Treasurer, and Attorney-General.[2] The discussion of the perplexing question of leases and sales was also avoided by a constitutional provision that the lands should be sold after their value had been appraised.[3] Thus Wisconsin sought by constitutional restrictions and directions to avoid some of the troubles which other States had experienced from the vacillating policy of uncontrolled and unrestrained legislation.

At the first session of the Legislature steps were taken to locate the five hundred thousand acres,[4] and for the appointment of appraisers in every county to appraise the value of the sixteenth sections and the university lands.[5] Upon the receipt of the report of the appraisers the Legislature ordered the lands to be sold at auction for not less than the appraised value. The land commissioners were authorized to loan the proceeds to individuals, in amounts not exceedfive hundred dollars, for not longer than five years, at seven per cent. interest.[6] In the following year provision was made for the appraisal and sale of the five hundred thousand acres which had been located in 1849. In this law it was provided that any actual settler upon the lands at the time

[1] Constitution, Art. X., Sec. 2.

[2] *Ibid.*, Art. X., Sec. 7.

[3] *Ibid.*, Art. X., Sec. 8.

[4] Wis. Laws, 1848, 42.

[5] *Ibid.*, 123. It was roughly estimated by a Senate committee in this year that the lands situated in the surveyed portion of the State were worth three dollars per acre, but the appraisers in their report give the average value at $3.66 per acre.—Assembly Journal, 1850, 499, 500. Superintendent Root in 1850 estimated that the fund would eventually amount to about five million and a half dollars.—Whitford, 39.

[6] Wis. Laws, 1849, 149.

they were located for the State should have the right to purchase at one dollar and a quarter per acre.[1] This recognition of "squatters" was perhaps no more than equitable when applied to those whose "claim" to the lands was older than that of the State itself, for the latter with proper care might have avoided selecting such lands.

In the following year, however, this right of preëmption was extended to any actual settler on the lands.[2] Whatever moral obligation rested on the State was fully removed by the law granting to previous occupants the right to purchase at the United States Government price regardless of the actual value of the lands. The reasons for throwing the lands open at that price to all who should choose to settle on them are not based on any claims of justice, but on a peculiar State policy. The wisdom of the policy remains to be considered. The whole history of Wisconsin discloses a solicitude on the part of the State to attract immigrants.[3] This disposition, natural in any State, is praiseworthy, provided no other trusts and interests are thereby prejudiced. When, however, a State, for the purpose of increasing her population deliberately parts with lands given to her for other special and important objects, at a price below their actual value, she certainly violates, if not the letter, at least the spirit, of the trust imposed on her. Wisconsin sought and obtained an enormous grant for school purposes, and after obtaining it, by so administering it as to assist in promoting an entirely different object, confessedly sacrificed the interests of the schools.[4]

In 1852 the minimum price of the five hundred thousand acres was fixed at one dollar and twenty-five cents per acre, except where the appraised value was higher. After having been offered for sale at public auction they were to be open to private entry.[5] In the same year certain unappraised

[1] Wis. Laws, 1850, 193. [2] Wis. Laws, 1851, 26. [3] See *infra*, 148, note 6.

[4] Governor Fairchild said in 1871: "The educational funds have suffered this loss in order to hasten the settlement of the localities in which the lands were situated. This is not right. They were held in trust by the State to be disposed of honestly and judiciously for the benefit of the educational funds." —Governor's Message, 1871, 6. [5] Wis. Laws, 1852, 12.

school lands were ordered to be appraised at not less than one dollar and twenty-five cents per acre.[1] By these various measures the Legislature threw into the market far in advance of the needs of the schools the greater part of the school lands in the State, at a day when many of them were in the woods, perhaps miles from any settlement.[2] The only limitation imposed by the State was that the lands should not be appraised at less than the price of government lands. It was not to be expected that the appraisers going into the back country would appraise a school section at a higher value than that at which all the surrounding land could be purchased from the national government, and in most instances they did not.[3] Though, in some instances lands appraised at this low valuation brought at public auction prices far above that valuation, much of the land was offered at auction without being sold. This would seem at first thought, to imply that it was not worth the valuation. But the matter is presented in a different light when it is considered that all lands once offered at auction and not sold are thereafter subject to private sale at the appraised or minimum price.[4] Speculators desiring to purchase blocks of land had simply to ascertain what lands had been offered at auction, and to select from these at the appraised value.

[1] *Ibid.*, 211.

[2] "Great loss has been sustained through the haste with which the school lands have been brought into the market. The lands generally having been situated in the new and unimproved parts of the State," etc.—Report of "Joint Select Committee to Investigate the Offices of the Land Commissioners." Senate Jour., 1856, II., Appendix, 31.

[3] "The lands . . . have seldom been appraised higher than ten shillings per acre—the government price. They have been brought into market at low appraisements and rapidly sold on account of the credit given, whilst the lands of the government remain undisposed of."—*Ibid.*

"Past experience is discouraging of the practicability of obtaining an appraisement regarding singly the increase of the funds to be derived from the sales of these lands."—Report of Land Commissioners, 1860, 38.

[4] "The lands once offered at public auction are by law subject to private entry and the amount to be sold to any one person is not limited . . . since the more rapidly sales can be effected so much sooner will these funds realize the benefit of the endowment. . . . And, if in the end only the appraised value is to be obtained, the sooner the lands are sold the better."—Report of Land Commissioners, 1854, 9.

This state of affairs instead of occasioning the thought that the school fund was being sacrificed, caused alarm lest the lands should be bought by those who would not settle on them, and the population of the State would not increase as was desired.[1]

In 1855 the Legislature decided to check this vast speculation. There were two methods of accomplishing this. The price of the lands might be raised, or a limit might be placed on the amount to be sold to any one purchaser. The former method would stop speculation by making it no longer profitable; the latter, by making it impossible on any large scale. One method would make the ultimate school fund larger; the other would not affect the final fund, while, by retarding the sales, it would make the immediate income smaller. The Legislature in its wisdom chose the latter, and, leaving the price as it stood, permitted sales thereafter to actual settlers only, and to these but a limited quantity might be sold.[2] Again the promotion of immigration had triumphed over the claims of education.

Soon, however, the opinion was expressed that the difficulty had been attacked at the wrong end. Rumors also became rife that the Land Commissioners had not labored entirely in the interests of the fund. The Legislature of 1856, heeding these rumors, appointed a committee to investigate the condition of the lands and funds, the system of laws in force, and the administration of those laws. The committee made a careful investigation, found much to condemn and little to approve in the system itself, and disclosed some "peculiar" transactions in the administration of the affairs of the office.[3] They found that speculators had bought up large quantities in order to reap the profit which should have accrued to the benefit of the fund, thus showing that the policy of offering lands at low prices in order to

[1] "It is for the Legislature to consider whether there are *reasons relative to the promotion of other interests* than those of the school fund, and the system of common schools relying upon it for support, sufficient to induce the adoption of a policy limiting and restricting the sales of these lands."—*Ibid.*

[2] Wis. Laws, 1855, 23.

[3] See the Report in Senate Jour., 1856, II., Appendix.

induce purchasers had not accomplished its object, while it had ruinously reduced the ultimate school revenue.[1] The discovery was also made that State officers and employés of the Land Department, whose official duties gave them an intimate knowledge of the subject, had, previous to the law of 1855, bought up hundreds of acres of these lands, knowing that in a very few years they would be worth twice or thrice the purchase price.[2] Could any better proof that the price was too low be desired? The committee urged that the whole policy of the State be changed, and that, as the schools needed no immediate increase of the fund, the unsold lands be withdrawn from the market until the government lands in their vicinity should have been sold, "and until the further withholding of them would be a serious obstruction to the settlement of the country." They accordingly reported a bill repealing all laws for the sale of school and university lands. Even with this plain statement of facts before them, the Legislature refused to pass the measure, and the sales continued on the old terms.

In April, 1863, the limit on the amount of land which might be bought by a single purchaser was revoked,[3] and on the very next day a law came into force reducing the price of all unsold lands which had once been offered for sale thirty-three per cent., provided the reduction did not carry the price below seventy-five cents per acre.[4] If the lands still unsold had been of a decidedly inferior quality, these two laws would demand no comment. Since, however, there were many good pieces among them, the striking change in policy inaugurated by these provisions gives rise to the suspicion that some other interest than that of the schools was being consulted. Such laws certainly do not bear on their face any evidence that the Legislature had in mind the prime—nay, the sole—object for which these lands

[1] "The facts to be derived from our experience under the present system . . . show that the school lands have not fallen into the hands of those who want them for occupation, but are held by speculators in large quantities, ranging from five to seventy-five thousand acres, thus more effectually retarding their settlement than if held by the State."—*Ibid.*, 31, 32.

[2] *Ibid.*, *passim*. [3] Wis. Laws, 1863, 359. [4] *Ibid.*, 431.

were given. Perhaps, however, the State was merely indicating its desire to get rid of the remaining lands, and have done with the business. There were still a few lands in the remote parts of the State which had not been put upon the market. In 1864 the Legislature fixed the price of these at one dollar and twenty-five cents per acre.[1] Since that day few changes have been made in the terms of sale or in the prices, though the Legislature has more than once been urged to increase the latter and abandon the policy which has taken from the schools a large portion of the value of the grant.[2] The prices in 1872 ranged from a dollar and a quarter to a dollar and a half per acre, but by the statute of 1878 they were fixed at one dollar and one dollar and a quarter per acre,[3] at which point they have since remained.[4] In 1878, and again in 1882, several thousand acres of these lands were withdrawn from the market and devoted to the State Public Park and other purposes.[5] These enactments seem to be clear and unconstitutional diversions of the lands "from the original purposes for which they were granted."[6] But one hundred and sixty-five thousand acres, or about eleven per cent. of the lands, remain unsold.[7]

The money derived from the five per cent. of the proceeds of public land sales in Wisconsin, which, by the State constitution, was made a part of the school fund, has been received from time to time by the proper State officials and incorporated with the proceeds of the land grant. Accord-

[1] Wis. Laws, 1864, 514.

[2] "Heretofore these lands have been sold at too low a price per acre. This is not right. The State should be as prudent in selling these lands as is the individual proprietor, who desires to make the most of them. . . . They are being purchased mainly by speculators, and the actual settlers, when they buy them, will have to pay the dealer a large profit which the funds ought to realize. The fact that speculators are eager to buy plainly shows that the lands are selling for less than their value. Every dollar that they are worth to the settler ought to enure to the funds. I therefore recommend that all these lands be immediately withdrawn from the market, and that they be carefully appraised before any further sales are made."—Governor's Message, 1871, 6.

[3] Revised Statutes, 1878, Ch. 15, Sec. 202–206.

[4] Report of Commissioner of Pub. Lands, Wis., 1882, 4.

[5] Report of Com. of Pub. Lands, 1880, 22, 23.

[6] *Ibid.*

[7] Report, Secretary of State, 1882, 8.

ing to the books of the State, this five per cent. has amounted to $309,035.28.[1] The total school fund of Wisconsin is $2,813,045.58.[2] Deducting the five per cent. fund and $75,000, as a near estimate of the payments to the school fund from fines and escheats,[3] the proceeds of the school lands amount to $2,429,010.30, which gives one dollar and eighty-seven cents as the average price received per acre.

Having thus traced the history of the disposition of the lands, it remains for us to see how the proceeds have been guarded. The law of 1849 provided that the moneys arising from sales should be loaned to individuals in limited sums. This method of investing the funds, while theoretically good for both the State and the borrowers, demands great care and much labor. In Indiana and Illinois such loans are made by local officials, who can know from personal investigation the character of the security, and are held responsible for losses. In Wisconsin, the business was in the hands of a central board, who could not examine every piece of land offered as security, but must rely upon information derived at second-hand. As early as 1852, the Governor intimated that loans had been made upon insufficient security, and expressed his disapproval of the system as apt to result in frequent losses, which, though small in themselves, would, in the aggregate, amount to a large sum.[4] No attention was given to the suggestion and the system continued. The school lands sold rapidly at the low prices, and hundreds of thousands of dollars were loaned by the commissioners to individuals in all parts of the State. Only partial payments were required on the lands sold, and mortgages were taken to secure the balance. For several years no further question was raised concerning these loans, and it was not until 1856 that a definite idea of the condition of the funds was obtained by any one except the com-

[1] Letter of Secretary of State, May 16, 1884. The books of the United States Treasury give the amount as $455,253.73. How the discrepancy arose, and which statement is right, I have been unable to learn. See Document A, 238.

[2] Report, Secretary of State, 1882, 9, 10.

[3] See Appendix, Table A.

[4] Governor's Message, 1852, 21.

missioners. In that year, the special committee to which reference has already been made,[1] in the course of their investigations, found that many losses had occurred, and that not only had many loans been made upon insufficient security, but in some cases this had been done with the connivance of the commissioners themselves.[2] This report did not bring about any change. In 1860 a new set of commissioners came into office and soon called attention to the subject.[3] By this time the losses had amounted to twenty-five per cent. of the loans.[4] The opinion was general that loans on mortgages were unsafe, even when all due precaution was exercised, and that the carelessness and connivance of the commissioners had only increased the losses.[5] It seems inexplicable that a system should have been permitted to remain so long in force which authorized the Commissioners to loan money to strangers upon securities of whose value they had no evidence but the opinion of other strangers.[6] Such investment of capital would never be made by any individual, nor is it conceivable that any trustee of a private estate would be upheld by the courts in such a procedure.[7]

In 1862, on the recommendation of the Commissioners, it was ordered that the school funds be invested in State bonds in preference to all other investments.[8] As Wisconsin, like

[1] *Supra*, 108.

[2] "Tens of thousands of dollars of this fund have been embezzled and hundreds of thousands lost or squandered."—Senate Journal, 1856, II., Appendix, 34.

[3] Report of Commissioners of School and University Lands, 1860, 58.

[4] House Journal, 1861, 570. President Whitford says, somewhat ambiguously: "The loss to this fund, during the first ten years of our State administration, was a large part of $732,340."—Whitford, 30.

[5] House Journal, 1861, 570. Also, Report of Commissioners of School and University Lands, 1861, 3.

[6] "Would any prudent capitalist invest his own money in loans to men he did not know—taking security upon lands he never saw, with no better evidence of their value than the appraisement of two men of whom he knew nothing?" —*Ibid.*

[7] "That system of management of a trust fund is radically defective, if not riminally wrong, which provides for investing it in any manner that exposes the fund to inevitable loss without any possibility of restoring it."—*Ibid.*

[8] Wis. Laws, 1862, 53.

nearly all the States, was compelled to borrow large sums at that time for war purposes, all moneys flowing into the school fund were readily invested in these State bonds. Under the circumstances, this was unquestionably the wisest investment possible, and guaranteed the school fund against loss. But the State, soon after the war, ceased borrowing money, and it was possible to obtain State bonds only by buying them at a premium.

So far as practicable this was done, but the school funds soon exceeded the total amount of State indebtedness. The Legislature in 1866 made that portion of its indebtedness which was owned by the school fund a permanent irreducible debt,[1] but wisely declined to borrow the money subsequently flowing into the school and other educational funds, and thereby impose upon the people a perpetual burden of taxation to meet the interest. Accordingly, as some other form of investment must be found, the Commissioners were authorized in 1868 to purchase United States bonds,[2] and in 1871 were further empowered to loan funds to school districts for the purpose of erecting school buildings.[3] This latter method was found to involve some of the same difficulties and delays in payment as had been experienced in the case of individual loans,[4] and has not been extensively employed. In 1872 authority was given to invest in Milwaukee City bonds.[5] This act has been followed by many similar ones, authorizing loans in large sums to various cities and counties in the State.[6] While the laws authorizing loans to individuals were never repealed, few such loans, if any, have been made during the past twenty years. About three fifths of the school fund is loaned to the State itself,—a permanent loan,—and the remainder is invested in United States, city, county, and school bonds, while a few loans to individuals are yet outstanding.[7] This plan of investing in municipal and other public bonds seems to present fewer objections than any other. The time can hardly come when

[1] Wis. Laws, 1866, Chap. 25.
[2] Wis. Laws, 1868, Chap. 111.
[3] Wis. Laws, 1871, Chap. 42.
[4] Report of Com. of Pub. Lands, 1872, 6.
[5] Wis. Laws, 1872, Chap. 118.
[6] See Reports of Land Com., 1873–1883.
[7] Report, Com. of Public Lands, 1883, 23.

good public securities cannot be found and purchased. Such bonds while often bearing low rates of interest are almost absolutely safe and require no care or labor on the part of the State.

Since 1862 the funds have been carefully and safely invested, and had equal wisdom been displayed in the management of the lands, the course of the State during the past twenty years would merit the fullest approbation. Of the period from 1848 to 1862 a far different opinion must be held, and in so far as any comment is required, the words of the Commissioners fully cover the case. "The State is bound for the preservation and application of this trust by every sentiment of gratitude and honor, and moreover by the promptings of interest and of duty to the people of the State themselves and to their posterity. Truth compels the confession that the trust has been most unfaithfully administered. The best of the school lands have been disposed of with eager haste and in disregard of the interest of the funds for which they were dedicated. Then the system adopted for the investment of the capital which has been realized to the funds from the sale of these lands subjects this capital to waste and loss to a fearful extent."[1]

The constitution of the State provided that the moneys arising from all grants whose purpose was not specified should be added to the school fund.[2] Accordingly, when the grant of swamp lands was made it was understood that the surplus proceeds should be so used. In 1856 the minimum price of these lands was fixed at five dollars per acre, except to previous settlers who were permitted to purchase one hundred and sixty acres at one dollar and twenty-five cents per acre. All others could purchase at public auction not to exceed three hundred and twenty acres each. Seventy-five per cent. of the net proceeds was to be placed in the school fund, and twenty-five per cent. was to constitute a drainage fund.[3] The establishment of so high a price and the limitation of the amount purchasable by a single indi-

[1] Joint Documents, 1862; Report of Land Commissioners, 3.
[2] Art X., Sec. 2. [3] Wis. Laws, 1856, 112.

vidual is to be attributed to the report of the committee, already alluded to, which so strongly condemned the policy of low prices and unlimited sales of school lands. This law did not long remain in force. The Commissioners of Lands argued with great plausibility that such high prices were unwise as the lands would not sell, and urged that competition at public auction would easily determine and produce the proper price of each parcel.[1] Notwithstanding that the past unhappy experience had shown that competition did not produce sales at the true value, and that the commissioners were not always disinterested in their advice, the Legislature reduced the minimum price to one dollar and twenty-five cents per acre. All lands were still to be offered at public auction, but any settler might preëmpt at the minimum price.[2]

Two days later, under a provision of the constitution never before carried into effect,[3] the income of twenty-five per cent. of the gross proceeds of the sales was diverted from the common schools and directed to be apportioned "to normal institutes and academies," and to be distributed to such academies and union or high schools as should maintain a normal department or institute.[4] In the following year it was provided that the normal-school fund should consist of twenty-five per cent. of the net proceeds of the lands.[5] At the same time the drainage fund having proved too small another twenty-five per cent. was devoted to that project.[6] This left twenty-five per cent. of the proceeds applicable to the school fund and twenty-five per cent. to the normal-school fund.

[1] "We are clearly of the opinion that by offering the lands at a public sale where a fair and just competition may be reasonably expected among the purchasers, all the tracts will sell for what they are really worth."—Report of Land Commissioners, 1856, 29.

[2] Act of March 5, 1857.

[3] The constitution provided that the income of the school fund should be "exclusively applied to the following objects, to wit: 1. To the support and maintenance of common schools. . . . 2. The residue shall be appropriated to the support and maintenance of academies and normal schools." Until this time there had been no "residue" beyond the needs of the common schools, and as a matter of fact the income has never yet been sufficient to "support and maintain" them.

[4] Wis. Laws, 1857, 93.

[5] Wis. Laws, 1858, 194.

[6] *Ibid.*, 68.

Sales were conducted in pursuance of this arrangement until 1865, when a radical change was made. Before considering this it must be mentioned that in 1863 the price of all swamp lands once offered for sale at auction and unsold was reduced to seventy-five cents per acre,[1] and in the next year all swamp lands which had not hitherto been exposed to sale were offered at auction at one dollar and twenty-five cents per acre,[2] while the limit on the amount purchasable by a single individual was swept away.[3] The effect of these laws was to hasten the sales and also to throw the lands into the hands of speculators who reaped profits which might have been derived by the State. A greater danger to the fund proceeded, however, from another cause—the appropriation of lands for the building of roads. This system was in vogue in Michigan, where it was flourishing most vigorously. The bills authorizing the construction of these roads were special acts and were often passed at the instigation of the "lobby" and in the interest of private parties.[4]

The Legislature in 1865 devoted itself to the task of making a permanent disposition of the lands, in such a way as to remove the danger of their being squandered and thrown away.[5] As the law stood only the proceeds of sales were pledged to the cause of education. The lands might be given away, or paid out for labor as in Michigan, without conflicting with any of the provisions for the school or normal fund. Now, however, the lands themselves and the proceeds of past sales, including all sums hitherto received in any way for the lands included in the grant, were divided into two equal parts, one of which was to constitute the normal-school fund and the other the drainage fund.[6] Detailed directions were given for the partition of the lands and moneys between the two funds, and it was provided that the lands belonging to the normal-school fund should be sold and the proceeds invested in the same manner as that pro-

[1] Wis. Laws, 1863, 284. Wis. Laws, 1864, 180. [2] Wis. Laws, 1863, 359.

[4] "Local 'grabs' and 'steals' were being continually worked up against the swamp-land fund. One favorite method of attack was the building of State roads, etc., these measures being often only the sharp schemes of private parties."—Salisbury, 44. [5] *Ibid.* [6] Wis. Laws, 1865, 643.

vided for the sale and investment of the school fund. This measure effectually prevented any future inroads upon the lands devoted to education, and afforded an almost certain prospect that the ultimate fund would be large since the original grant was over three million acres.

As the result of the division the normal-school fund received about six hundred thousand dollars in cash and obligations on land contracts, and about five hundred thousand acres of land already on sale, "with other lands not yet in the market."[1] These last were swamp lands which the United States Government had not yet patented to the State, and comprised many thousand of acres. Many of these have since been turned over to the State authorities. In 1865 the prices ranged from seventy-five cents to one dollar and twenty-five cents per acre, and by numerous special acts passed since then, the prices in certain counties have been reduced to fifty cents per acre, presumably because of the inferior quality of the lands. In 1882 there remained unsold about four hundred and seventy-five thousand acres,[2] while the fund realized from lands sold amounted to $1,147,071.58,[3] invested in State certificates, United States, and city bonds, and loans to counties and individuals. The management of this fund has been excellent and presents a striking contrast to that of the other educational funds of the State. The prices at which the lands are held to-day are, however, too low, and should be raised. Many of them are rapidly increasing in value, and the benefit of the increase should certainly accrue to the fund.[4]

B.—SEMINARY OR UNIVERSITY LANDS.

(*a*) OHIO.

The two townships stipulated for in the contract between the United States and the Ohio Company[5] in 1787 "for the support of a literary institution" were located in 1795.[6] By the

[1] Salisbury, 48. [2] Report, Land Commissioners, 1882, 6. [3] *Ibid.*, 24.
[4] See the suggestions of the Land Commissioners in their report for 1882, 28, 29. [5] *Supra*, 17.
[6] Walker, 311. The lands selected were the present townships of Athens and Alexander in Athens County, Ohio.

terms of the contract [1] these lands were to be applied to the intended object in such manner as the Legislature of the State wherein the townships lay might think proper to direct. In 1802 the territorial Legislature chartered the American Western University in the town of Athens, and vested the lands in the corporation "for the sole use, benefit, and support of the University," granting to the trustees the power to lease them for any period not exceeding twenty-one years.[2] With the object of attracting lessees the lands and all improvements made on them were declared forever exempt from territorial and State taxation. Though the trustees of the proposed university were named in the act they appear to have taken no steps to perfect the organization or to utilize the grant.

At the first session of the State Legislature in 1803, commissioners were appointed to appraise the lands and to report the result of their labors.[3] In 1804, upon the receipt of this report, the Legislature, on the 18th of February, repealed the law chartering the American Western University, and in its place made provision for the establishment of Ohio University at Athens.[4] To this institution the two townships were given [5] as an endowment, and minute directions were laid down for their management. The trustees were to appoint three disinterested freeholders to subdivide, estimate, and value the lands in their original and unimproved state.[6] After this valuation was made, and after four weeks' notice "in the newspaper printed in Marietta," the trustees were to give to any applicants leases for ninety years, renewable forever, on a yearly rent of six per cent. on the amount of the valuation. The land so leased was to be subject to a revaluation at the end of thirty-five years, and again at the

[1] Walker, Appendix C.

[2] *Apud* Walker, 312.

[3] Act of April 16, 1803.

[4] 2 Ohio Laws, 193.

[5] Several of the trustees appointed for this university were among those named for the first one, and the new university was really the successor of the other.

[6] Some of them had been settled upon in the territorial days by pioneers who had made improvements and erected buildings. These settlers the Legislature designed to protect by requiring the appraisal to cover only the original value of the lands, and permitting the occupant to lease at that valuation.

expiration of sixty years, on each of which valuations the lessee was to pay a rent of six per cent. until the next was made. At the end of ninety years a final appraisal was to be made, which should thereafter serve as the basis of the rent. The State was never to tax the lands, but the university authorities were given power to lay an additional yearly rent equal to the amount of State tax "imposed on property of like description." This last provision was in effect to give to the university the State taxes upon those two townships, though the State did not undertake to collect them.

This law was just and equitable in all respects, and during the ensuing year about twenty thousand acres, or nearly one half the entire grant, were applied for by occupants and others.[1] This certainly seemed a good beginning for the young institution. Governor Tiffin, in his message to the next General Assembly, stated that the prospects were flattering, but added that "the settlers on these lands were induced to apply for leases under the impression that the Legislature would review the law and be governed by a more liberal policy."[2] The revaluation clause was the feature of the law which created the notion of illiberality. The wisdom of such provisions has already been discussed. But the Governor so far respected the "impression" of the settlers as to urge a modification of the law.[3] As the Governor was an *ex-officio* trustee of the university the Legislature naturally assumed that his opinions on this subject were worthy of consideration, and accordingly proceeded to modify the law of the previous year. It was now enacted[4] that the land should be appraised by men named in the law "at the present real value in its original and uncultivated state." The trustees were then to lease the same to any

[1] Walker, 332, Note.

[2] 3 House Jour., 8.

[3] "Should it be thought that these lands ought to be valued at a generous [to whom?] price once for all, and leases be authorized to issue upon the payment of the legal interest yearly, there can be no doubt that they would soon all be occupied, and from the sales of the town and outlots a sufficient sum would be raised to erect such buildings as may be immediately wanted, and that the rest [rents?] of the lands and lots would be sufficient to support the university and answer every purpose for which the donation was originally made."—*Ibid.*

[4] 3 Ohio Laws, 79.

persons, "who have applied or may apply," for ninety-nine years, with the privilege of renewal, at an annual rent of six per cent. on the appraised valuation. But no lands were to be leased on a valuation of less than one dollar and seventy-five cents per acre.

The law contained no direct provision for revaluations at any future time, nor did it expressly do away with them, simply declaring that "so much of the act passed the 18th day of February, 1804, as is contrary to this act," was thereby repealed. Were it not for the passage quoted from the Governor's message, there would seem to be no occasion for even a suspicion that there was a thought of repealing the only clause in the first law which really protected the interests of the university. In later years this question, whether the lands leased under the law of 1805 were subject to revaluation, occasioned a long and serious struggle between the university and lessees. In 1807 the Legislature repealed the clause fixing the minimum value of the lands, and authorized the trustees to lease all lands at the appraised value, whatever it might be.[1] All were soon leased, but the trustees experienced such difficulty in collecting the rents that for several years the Legislature authorized them to receive payment in produce.[2] In 1826, when the State adopted the policy of selling its educational lands, the trustees were authorized to sell any unleased lands,[3] and also to convey in fee-simple any leased lands upon payment by the lessee of the amount at which the land was valued when it was leased.[4] The impolicy of any provision of this nature has already been shown.[5] Under this law about two thousand acres have been sold and conveyed in fee.[6]

In 1841 the trustees took steps to revalue the lands in accordance with the law of 1804, which required a revaluation, at the expiration of thirty-five years. The lessees objected on the ground that this provision had been repealed by the later law of 1805. An issue was made upon a test case

[1] 5 Ohio Laws, 85. [2] Walker, 338.

[3] A few lands had reverted to the university through the failure of the lessees to pay the rent.

[4] 24 Ohio Laws, 52. [5] *Supra*, 54. [6] Education in Ohio, 194.

which was argued before the Supreme Court of the State. The decision of the court was that, so far as the provision for revaluation was concerned, the two laws were not inconsistent, hence that the lands were held subject to revaluation.[1] Defeated in the courts, the lessees besought the Legislature for relief,[2] and with complete success, in spite of the fact that a majority of the committee to whom the matter was referred reported adversely. An act was passed declaring that the intent of the act of 1805 "was that the leases granted under and by virtue of said act, and the one to which that was an amendment, should not be subject to a revaluation at any time thereafter."[3] The pressure brought to bear upon the Legislature in behalf of the lessees was enormous, though there is no evidence that any but legitimate arguments were used upon the members. The lobby in behalf of the bill is said to have been almost unrivalled in the history of the State.[4] In consequence of this strange though unfortunately legal interference of the Legislature no revaluations have been made, and nearly two townships of the choicest land in the State are rented upon a valuation made seventy-five years ago when Ohio was a comparative wilderness. The rent from forty-four thousand acres is but forty-two hundred dollars per year.[5] "The aggregate valuation of the university lands for taxation is $1,060,000, while the valuation for rental is scarcely $70,000."[6]

[1] McVey *et al vs.* Ohio University, 11 Ohio Reports, 134.

[2] It has recently been brought to my attention that the struggle of the lessees of these lands against a revaluation and higher rent bore many resemblances to the present Irish agitation against rack-rents. It is stated that the lessees, accustomed for thirty years to pay a merely nominal rent of from 10½ to 12 cents per acre, would not submit to a reappraisal; that even after the legality of the reappraisal had been affirmed by the Supreme Court, it was impossible to collect the additional rent; that whenever a suit was instituted the jury, in utter defiance of their oath, the law, and the evidence would uniformly render a verdict in favor of the lessee; and that the bill mentioned above was lobbied through the Legislature and put an end to the contest.

[3] 41 Ohio Laws, Local, 144.

[4] The history of the case, with all the memorials and evidence of all kinds bearing on the question, is found in a small volume entitled "Revaluation of the Lands of Ohio University." Published for the lessees by N. H. Van Vorhees, Athens, O., 1845.

[5] Letter from Pres. W. H. Scott, April 30, 1883.

[6] Education in Ohio, 198.

The authority conferred upon the trustees in 1804 to collect an additional rent equal to the State taxes levied on similar property has not been exercised until recently. In 1844 the trustees asked the Legislature to enforce the collection of this rent, but their request was not granted. In 1875, after the occupants had for nearly three quarters of a century escaped from State taxation and any burden in lieu thereof, the Legislature passed an act requiring the trustees to demand and collect the additional rent for the support of the university.[1] In the following year the lessees, remembering their success in annulling the revaluation clause, petitioned the Legislature for relief from the tax clause, but all relief was refused. In June, 1876, the trustees took measures to collect this rent. The lessees applied to the courts for an injunction to restrain the trustees from taking further action, but failed in all the State courts. The matter is now before the United States Supreme Court for decision. In the meantime, however, the rent is regularly collected, and its average amount is not far from three thousand dollars.[2] The total annual income from this grant of two townships is thus but about seven thousand two hundred dollars. Had the Legislature in 1843 resisted the importunities of the lessees, and refused to interfere with the laws as expounded by the highest judicial authority in the State, and had the trustees insisted on their rights, there is every reason to believe that the endowment of the university would be more than ten times its present size. At the same time, it is the neglect of the trustees alone that the rent in lieu of State taxes, which is unquestionably the property of the university, has not been regularly collected from the outset.

The State of Ohio also received the benefit of another grant of lands for a college. By the contract between the United States and John Cleves Symmes one township was to be set apart for a seminary of learning.[3] This reservation, confirmed by law in 1792,[4] was secured to Ohio upon its

[1] 72 Ohio Laws, 177.
[2] Letter from Pres. W. H. Scott, April 30, 1883.
[3] *Supra*, 18.
[4] 1 U. S. Stat., 266.

admission as a State. Commissioners were immediately appointed by the State to locate the land. They selected what is now the township of Oxford in Butler County.

In 1809 the Legislature chartered Miami University and vested the seminary township in the trustees of the new institution,[1] permitting them to use in the support of the university only the income arising from the lands. The terms of the law were peculiar, but in effect the trustees were to lease the property in tracts of not more than one hundred and sixty acres for ninety-nine years to the highest bidder, but at a valuation of not less than two dollars per acre, the lessees to pay an annual rent of six per cent. on the amount of their bid. The leases were to be held subject to a revaluation every fifteen years, the land being appraised in each instance as if in an unimproved state. These provisions were similar to those for the lease of school lands, and embody the best form of the long-lease system, affording to the university the benefit of any increase in the value of the bare, unimproved land.

In less than a year after this law was passed the Legislature destroyed all its possible benefits by repealing so much of it "as required a revaluation every fifteen years."[2] By this change the lands were brought into the same condition with so many of the other educational lands of Ohio. At a single step the Legislature had gone from one of the best to the worst possible method of disposing of them—a step which proved the ruin of the university. A careful analysis, made a few years since,[3] of the membership of the two Legislatures which passed these laws, showed that the same men composed a majority in each. The only valid explanation of their contradictory action is that they were eager to lease the lands immediately in order to get the college started, and that during ten months under the first law only a small part of the township had been leased.[4]

The mistaken notion of the Legislature must be obvious to all. With the Ohio University in operation the demand

[1] 7 Ohio Laws, 184.
[2] 8 Ohio Laws, 95.
[3] Education in Ohio, 201.
[4] *Ibid.*

for higher education in the infant State was not so great as to require the immediate establishment of a second college. Whatever may have been true concerning the common schools, an institution of learning of the higher sort, which might live for centuries, could well afford to delay its opening for a few years if by so doing its permanent endowment would be increased. Even as it was, the college did not throw open its doors until 1824. In a short time all its lands might have been disposed of under the first law, and at the end of each fifteen years its income would have been increased by a large amount. Under the law of 1810 the entire township was almost immediately leased, and with a paltry income of five thousand six hundred dollars per year from its endowment of twenty-three thousand acres of land,[1] the university dragged out a miserable existence until 1873, when for lack of means its doors were closed.

(*b*) INDIANA.

The land reserved in 1804 for a seminary of learning in the Vincennes land district of Indiana Territory, was located in 1806 by the Secretary of the United States Treasury, who set apart for that purpose one of the townships in Gibson County. In the same year the territorial Legislature incorporated Vincennes University, and in the following year by a supplementary act provided "that the trustees . . . should be legally authorized to sell . . . any quantity not exceeding four thousand acres" of the seminary township "for the purpose of putting into immediate use the said university, and to have on rent the remaining part of said township to the best advantage for the use of said . . . university."[2] This act assumed that the territorial Legislature possessed full powers over the lands, though Congress had merely ordered that they be "reserved from sale" by the United States for the use of a seminary of learning.[3] Immediately after the act of incorporation was passed the institution was organized.

The trustees soon sold four thousand one hundred and

[1] Education in Ohio, 201. This income represents ninety-three thousand dollars as the valuation of the lands, including many town and village lots.

[2] Acts of Nov. 29, 1806, and Sept. 17, 1807. [3] 2 U. S. Stat., 279.

thirty-six acres[1] and rented portions of the remainder. With the proceeds of the sales a building was erected for the university. Congress, in 1816, by special act confirmed the titles of those who had purchased from the trustees.[2] The fact that such a measure was deemed necessary to protect the purchasers proves that, whatever other powers over the lands had been vested in the territorial Legislature, the right to sell had not been given them, and hence that the trustees had no such right. Even had this power been clearly in the hands of the trustees, it did not by the conditions under which Congress made the reservation carry with it any right to use the principal for the buildings or expenses of the institution. Only the income was thus legally available under any circumstances. This use of the fund was, however, never questioned so far as to cause any restitution to be made.[3]

When Indiana became a State in 1816 an additional township of land was given to the State for the use of an institution for higher education. The Legislature in 1820 established a State seminary at Bloomington, and appropriated for its maintenance the income arising from this second township, which had been located in Monroe County.[4] The income was to be obtained by leasing the lands. At the same session of the Legislature a resolution was adopted touching the Gibson County township, which, without referring to Vincennes University, assumed the grant to that institution by the territorial Legislature to be null and void. The resolution appointed a superintendent to lease the lands in that township "which are now under the control of the State of Indiana," and to collect all arrears of rent "due said State."[5] The superintendent was made accountable to the Legislature and was paid by the State. Two years later commissioners were appointed to sell the "remainder" of these lands[6] at public auction for not less than five dollars per acre, and to

[1] Document F.

[2] 6 U. S. Stat., 171.

[3] See *infra*, 143 and 149, for similar attempts to misapply the seminary fund in Michigan and Wisconsin.

[4] Indiana Laws, 1820, 82.

[5] *Ibid.*, 160.

[6] This meant all but the four thousand acres sold in 1807 by Vincennes University.

deposit the proceeds in the State treasury for the benefit of the State seminary.[1] This is the earliest instance in the Northwest Territory where the system of leasing educational lands was formally abandoned in favor of the method since adopted by the five States. The supposed advantages of the latter system as applicable to all educational lands had been set before the Legislature by an elaborate report of a special committee, submitted a few days before the passage of this law.[2] The Legislature, in devoting the income to the State seminary, did not venture, as they had two years before, to ignore the previous charter of Vincennes University. The act plainly declared that the endowment was bestowed upon the State seminary because the corporation of Vincennes University "had expired through the negligence of its members." The ground for this assertion was that the trustees had neglected to take the necessary steps for keeping good their number, and the existing trustees were fewer than were required by their charter in order to hold legal meetings or transact business. Vincennes University was soon closed for lack of funds to support it.

Thus the State seminary came into possession of both townships as an endowment fund, with the exception of the four thousand acres already sold. During the next fifteen or twenty years, with no thought of further trouble from Vincennes University, the Legislature passed various measures to secure a steady income for the seminary. In 1825 the Monroe County lands were ordered to be leased for two years at public auction at an annual rent of not less than sixty-two and one half cents per acre.[3] All the rents and profits of the lands and the interest upon the fund then in the State treasury from the sales of Gibson County lands were appropriated to the seminary. By a law adopted two years later all unsold lands in the two townships were divided into three classes, with minimum prices of three dollars and

[1] Indiana Laws, 1822, 111. [2] Senate Jour. Indiana, 1821–22, Appendix.

[3] Indiana Laws, 1825, 97. The Governor had called attention to the faults of existing leases made by the seminary trustees, and had suggested that the Legislature "inquire whether they [the seminary lands] are not daily diminishing in value."—Senate Jour., 1825, 29.

a half, two and a quarter, and one and a quarter respectively. With the exception of three sections near Bloomington they were to be offered at public auction within a year. The proceeds were to be paid into the State treasury, and all interest accruing was to be turned over to the trustees "to an amount not exceeding the pay-roll of the teachers."[1] Hitherto the State had paid the interest on this fund, but in 1828 a State loan-office was established for the purpose of lending the moneys to citizens of Indiana on real-estate mortgages for not more than five years, at six per cent. interest.[2]

In 1828, by a modification of its charter, the seminary became the College of Indiana, and the three sections near Bloomington reserved from sale in 1827 were placed under the immediate control of the trustees.[3] By other laws the public sales were continued on the same terms as before, while all lands not sold at auction were thrown open to private entry at the minimum prices already established.[4] In 1830 these prices were reduced to two dollars and a half, one and a half, and seventy-five cents in the three grades.[5] In the same year the Legislature authorized the trustees to sell one of the three reserved sections at not less than five dollars per acre, and to use the proceeds for purchasing apparatus for the college.[6] Similar disposition was afterwards made of the other two sections. It is hardly necessary to call attention to the illegality of such uses of the principal of the fund. In 1843 the style of the institution was changed to Indiana University,[7] under which name it has since been known. By that time the lands were nearly all disposed of and the university was deriving an income of perhaps five thousand dollars from the proceeds of forty-two thousand acres.[8] It is needless to say that the fund would have been twice or thrice as large had a proper system of leasing been maintained and

[1] Indiana Laws, 1827, 95.
[2] Indiana Laws, 1828, 127.
[3] Indiana Laws, 1828, 115.
[4] Act of January 16, 1828. Also Indiana Laws, 1829, 140.
[5] Indiana Laws, 1830, 167.
[6] *Ibid.*, 166.
[7] Revised Stat., 1843, 299.
[8] The fund itself in 1846 amounted to $59,770, exclusive of balances still due from purchasers.—Auditor's Report, 1845.

no sales made until government lands had become scarce in the vicinity.

Troubles now arose from an unexpected cause. After Vincennes University was closed in 1824 no attempt at a reorganization was made for some years. In 1838 the Legislature made provision for supplying the vacancies in the board of trustees,[1] thus calling the old corporation again into activity. A clause was inserted in the act which was intended to prevent the renewal of any claim to the seminary township taken from the institution in 1822. As soon, however, as the other business of the new board permitted, steps were taken for the recovery of the lands. In 1844, suits were begun against the occupants and purchasers of those which had been sold since 1822. Before a decision had been rendered in any of the cases the State assumed all responsibility for the sales and authorized the trustees to bring suit against the State to determine where the title to the lands lay.[2] The case passed through various courts, and was finally argued in the Supreme Court of the United States, where in 1852 a decision was rendered in favor of the university.[3]

It now seemed inevitable that the State University must lose nearly one half of its small endowment, but a series of events followed which proved that the litigation was but a blessing in disguise for both institutions. The State having already assumed the responsibility in the matter, the Legislature satisfied the claims of Vincennes University by direct payment of the proper sum from the State treasury, leaving the endowment of the State University intact.[4] In addition to this, Congress, to which an appeal for relief had been

[1] Act of February 17, 1838.

[2] Act of January 17, 1846.

[3] Vincennes University *vs.* State of Indiana, 14 Howard, 268. The court declared that Vincennes University had come into legal possession of the land in 1807; that the Legislature could not divest its title to the land and confer it upon any other body politic, and that when the board was reorganized under the act of 1838 all its former rights and powers were restored. Incidentally it was held that by the terms of the act of Congress in 1816 (*Supra*, 35) the United States Government had vested only the second township in the State, thus recognizing the right of Vincennes University to the first.

[4] Indiana Laws, 1855, 50.

made while the suit was pending, granted to the State for the benefit of Indiana University an amount of land equal to that to which Vincennes had proved her title.[1] Still further, Congress, in 1852, granted to the State four thousand one hundred and thirty-six acres for the same purpose in lieu of those sold by the trustees of Vincennes University previous to 1816.[2]

Thus the State University lost nothing by the litigation, but obtained, in addition to what it possessed before, more than a township of new lands. On the other hand, Vincennes University received from the State $66,585 in payment of its claims.[3] The annual income from this sum, which is more than the bare proceeds of the land grant, amounts to about four thousand dollars.[4] In addition to this, she received in 1873 a direct gift from Congress of all the vacant and unclaimed lands in Knox County, Indiana.[5] These lands, amounting to a few thousand acres, are under the immediate control of the trustees. Their proceeds will add several thousand dollars to the endowment fund of the college.[6]

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[1] 10 U. S. Stat., 267.

[2] 10 U. S. Stat., 13. This is one of the choicest passages in the whole history of educational land-grants. After the question of the title to the township was already in the lower courts, the Legislature of Indiana petitioned Congress for this grant, affirming that "the president and trustees of Vincennes University *without any color of title* sold four thousand acres" of the original township which was "vested in the State of Indiana." (Indiana Laws, 1849, 151. Senate Miscellanies, 1st Session, 31st Cong., No. 40.) This disingenuous statement, assuming the very points at issue in the courts, and carefully disguising the truth, completely deceived Congress. The Senate Committee on Public Lands reported favorably, and their report shows how far the deception extended. "It does not appear,' runs the report, "that the territorial authorities of Indiana in any manner consented to the sale of the land by the trustees of the Vincennes University." (Document G.) What the true state of the case was we have already seen, but by forestalling the decision of the court, and by concealing important facts, the State obtained for the university a clear "bonus" of four thousand acres.

[3] This sum included interest on the funds from the date of the sales of the lands. The university received actually but $41,585, its attorney having retained $25,000 for his services in the case, of which sum a suit failed to dispossess him.—Schools of Indiana, 135.

[4] *Ibid.*, 136. [5] 17 U. S. Stat., 614. [6] Schools of Indiana, 135.

The additional lands received in 1852 and 1854 for the State University, were selected in small tracts in various parts of the State. In 1859 the trustees of the university were ordered to proceed to the appraisal of the lands; after the appraisal was made, the auditor of each county where the lands were situated was to sell them whenever the trustees ordered. They were first to be offered at auction at not less than the appraised value, and those not thus sold were subject to private entry.[1] The proceeds were deposited in the State treasury, and loaned out at interest. It is difficult, and perhaps needless, to give any exact statements of the proceedings with reference to these lands. Judging from the small fund derived from them, the appraisers rated them at low valuations. In spite of this, they have not all been sold, and in 1882 the State Auditor urged that they were held at too high prices.[2] The whole system of managing the State lands, and keeping the records in Indiana, has, until recently, been loose and faulty. As a result, it is impossible to tell how many acres are still owned by the university. According to the records, there remain unpatented 8,526 acres,[3] but of these many have been sold, for which the university has received the final payments. The State has neglected to issue, or the purchasers have failed to demand, the proper patents.[4] Until the purchasers shall respond to the request of the officials, and present their certificates of payment for the lands, there are no means of ascertaining the exact state of affairs. How such a loose system of managing trust lands can have existed and been tolerated seems inexplicable.

The proceeds of all the grants have been invested since 1828 in small loans to individuals, the loans being secured by real-estate mortgages. The difficulties and dangers of this method of investing trust funds where the loans are not

[1] Indiana Laws, 1859, 234.

[2] "Many of these lands cannot be sold. . . . The appraisement . . . was made when the price of real estate was much higher than at present (?); and in consequence of the depreciation in value thereof, the county officers are unable to dispose of them."—Auditor's Report, 1882, 110.

[3] *Ibid.*, 111–115.

[4] *Ibid.*, 110.

made by local officers, have already been mentioned. Indiana did not escape these dangers and consequent losses. In 1845 many of the borrowers had ceased paying the interest on their loans, and in some cases the security was found insufficient for the amount loaned. It was discovered that in the times of high prices preceding the panic of 1837, loans had been made up to the full estimated value of the land offered as security. The value subsequently falling off, the full amount of many such loans could not be recovered by the State.[1] The system was, however, continued, and the entire productive fund of the university is invested in loans to individuals. Since 1855 the Auditor and Treasurer of the State have jointly received five per cent. of the income of the fund for managing it.[2] The numerous small loans have required much of their time, but Indiana is rich enough to follow the example of her sister States, and to pay for this labor from the State treasury. The proceeds of the sixty thousand acres thus far sold amount to $139,036.74,[3] being an average of about two dollars and thirty cents per acre for lands, many of which are inferior to none in the State.

(*c*) ILLINOIS.

The township of land reserved in 1804 for a seminary of learning in the Kaskaskia land district was set apart in 1816 for the Territory of Illinois. The territorial Legislature appears to have taken no measures to establish a seminary, or utilize the grant. When Illinois became a State, in 1818, the second township was granted to her for the same purpose, with the privilege of locating it in detached tracts of small area. This insured the selection of better lands than where the township was located as a single tract. None of the lands were selected until 1824, and some of them as late

[1] "Many of these forfeited lands were mortgaged at their estimated value in 1835–6 and 7, and are now far from being a sufficient security for the amount loaned. There is but little prospect that any considerable portion of them can be disposed of for the full amount due."—Auditor's Report, 1845. See Indiana Laws, 1846, Appendix.

[2] Indiana Laws, 1855, 203.

[3] Auditor's Report, 1882, 121.

as 1830. In January, 1829,[1] the Legislature authorized the sale of the selected lands at public auction. A minimum price of one dollar and twenty-five cents per acre was put upon them, and if not sold at the auction, they could be purchased at any time thereafter at the minimum price. Settlers were given the right of preëmption at that price.[2]

The first township the Legislature had in 1821 ordered the State Auditor to lease.[3] When he took steps to carry out this instruction, he found that the township was of such poor quality that it was impossible to lease it. Judging from the descriptions given of the land, it must have been selected after a glance at some map, not from an examination of the country itself.[4] In 1829, the Legislature, in the hope of obtaining a better township addressed a memorial to Congress representing that the township would always be "totally valueless for a seminary of learning," and asking the privilege of exchanging it for an equal quantity of land to be selected in small tracts.[5] Congress granted the prayer[6] in 1831, and the State made new selections, which are among the best farming lands in Illinois.[7] Such was the haste to dispose of the lands, that before Congress had consented to the exchange, a State law was passed providing for their sale on the same terms as those prescribed in the case of the other seminary lands.[8] All but one sixteenth of the entire seventy-two sections were soon sold, and but three tracts were sold for more than the minimum price.[7] Indeed, had the Legislature determined that the lands should not sell for more than the minimum price, they could not have carried out their determination more successfully. Under the law all were offered at auction at one time, and those not disposed of then were purchasable at any subse-

[1] Pillsbury, cxxxii., cxxxiii. To this admirable paper I am indebted for many details. [2] Illinois Laws, 1829, 158. [3] Illinois Laws, 1821, 60.

[4] "A large part of this township of land is now found to be filled with lakes and swamps, while other parts of it are barren and sterile, so that it has been found impracticable to lease the same, or apply it in any manner to the objects contemplated in the grant."—State Papers, 6 Public Lands, 14.

[5] *Ibid.*, 13. [6] 3 U. S. Stat., 475. [7] Pillsbury, cxxxiii.

[8] Illinois Laws, 1831, 171.

quent time for one dollar and twenty-five cents per acre. As there was no demand for so many lands, there was little competition at the auction. Had only a small amount been offered for sale at one time, nothing but a combination among purchasers could have prevented competition and a consequent increase in the prices obtained.

The terrible wastefulness in selling these selected lands, under any circumstances, at the lowest price at which lands could be bought in the United States is apparent. In the light of accompanying legislation, and certain other facts, the transaction assumes even a worse complexion. The sales were not ordered because there was in existence any seminary of learning which needed for its support the income from the fund; nor can proof be found that the Legislature which fixed the price and authorized the sales contemplated the immediate organization of any institution capable of taking the benefit of the grant. Certainly none was established until a full quarter of a century later. The truth seems to be that the Legislature desired the use of the fund for other purposes, and established such prices for the lands as would result in speedy sales.

To understand the designs of the Legislature it is necessary to note the financial condition of the State. Since 1821, Illinois had been suffering all the evils resulting from an unlimited issue of paper currency.[1] A weight of debt had been thrown upon the people. Taxes had, in consequence, become burdensome to them, and a Legislature that ventured to increase taxation was overwhelmed with reproach. As a result, all sorts of shifts were resorted to by the legislators to lessen taxes and avoid unpopularity. Among other schemes occurred the expedient of selling the seminary lands and borrowing the money to meet the current expenses of the government.[2] We have just seen how the lands were offered at prices intended to force speedy sales, in utter disregard of their actual value, and when no college was organized to utilize the fund. It remains to show how the State used the proceeds. The Legislature did not wish to make their game

[1] Edwards, 175; Sumner, 122.

[2] Ford, 79.

too evident, and the law which authorized the sales contained an innocent provision constituting four of the State officers a board of commissioners to take charge of the money and invest it in "stocks or funds."[1] Then by a separate act the Governor was instructed to borrow the school fund and the proceeds of the seminary lands at six per cent. per annum; the interest to be added to the principal until needed.[2] This last clause is the key to the whole plot. Here was a method of borrowing money without paying any immediate interest. At the end of each year the proper sum was added to the fund *on the books* and the whole reckoned as principal the next year. So long as the Legislature did not see fit to establish a college to take the benefit of the fund, so long would it be able to use the money and throw upon succeeding generations the burden of paying all the interest.

In 1835 it was provided that the interest instead of being added to the principal should thereafter be loaned to the school fund for distribution over the State.[3] This arrangement lasted until 1857, when finally the State Normal University was established and the income of the fund given to it.[4] Thus it appears that the first lands were sold twenty-eight years before the fund was applied to its proper use. For twenty-two years of that time the interest was "loaned" to the school fund, and the loan, amounting in 1857 to seventy thousand dollars, has never been repaid; that is, from 1835 to 1857 the seminary fund was illegally diverted to the use of the common schools. There may have been reasons why the schools should borrow money,[5] but there can be no valid ground for permitting a trust fund to be diverted from its true object with no thought of reparation.

In 1861, the four and one half sections still unsold were given to the Illinois Agricultural College. They were soon disposed of for fifty-eight thousand dollars, or about twenty dollars per acre. The proceeds were mismanaged by the college, and in 1872 the State took steps through the

[1] Illinois Laws, 1829, 158. [2] *Ibid.*, 118. [3] Illinois Laws, 1835, 23.
[4] Illinois Laws, 1857, 300. [5] See Pillsbury, cxxxiv.

courts to recover the fund on the ground that the college had not used it according to the terms of the grant! The suit resulted in favor of the State, and on the judgment a quantity of land has been secured which has since been sold for nine thousand dollars. This sum should be added to the seminary fund, though it does not yet appear there on the books of the State.[1] The fund amounts to $59,838.72, and the annual income is $3,590.32.[2]

This fund is fairly entitled to the distinction of having been the worst-abused educational trust fund in the Northwest Territory. Other States have sold their lands at as low prices, and some have hurried the sales in order to afford an immediate income for the beneficiary of the trust; Illinois alone has sacrificed the lands thirty years before the beneficiary of the trust was created. Other States have borrowed the funds after the lands were sold; Illinois alone has sold the lands in order to borrow the proceeds. Other States have lost portions of the principal and interest; Illinois alone has by law used the income for other purposes than those intended in the grant. Had the lands been leased until 1857, when the grant was first legitimately used, and then sold, they would have produced a fund of more than eight hundred thousand dollars.[3]

In addition to the two townships one half of one per cent. of the proceeds of the sales of public lands within the State was given to the State for a college or university. The history of this fund up to 1835 has already been related in connection with that of the school funds.[4] In 1836 it was ordered that the interest instead of being added to the principal, as had been the custom, should thereafter, like the interest on the seminary fund, be loaned to the schools.[5] This continued until 1857, when the fund was given as an endowment to the State Normal University.

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[1] *Ibid.*

[2] Illinois School Report, 1882, cxliii. From 1839 to 1873 one twenty-fourth of the income was given to the State Deaf and Dumb Institute.

[3] The land sold in 1861 at twenty dollars an acre is claimed to have been no better than the remaining forty thousand acres which were sold in 1830–5 for one dollar and twenty-five cents per acre.

[4] *Supra*, 83–85.

[5] Illinois Laws, 1835, 23.

It has been shown that the interest accumulating between 1835 and 1857 on the fund derived from the seminary lands was never repaid by the State or the school fund. The interest on the "one half per cent." fund the State has returned.[1] A portion of this back interest has been used in erecting buildings, while about thirty-four thousand dollars have been added to the principal. The fund now amounts to $156,613.32, affording an annual income of $9,396.80. Since 1877 the income of both funds has been equally divided between the two normal schools of the State.[2]

(*d*) MICHIGAN.

By the act of Congress in 1804, already frequently alluded to, one township in the Detroit land district was reserved for a seminary of learning in the territory now under the jurisdiction of the State of Michigan. By a treaty concluded at Fort Meigs, in September, 1817, between the United States and various Indian tribes, three sections of land were granted to "the corporation of the college at Detroit," and full powers given to the corporation to sell them.[3] The "college at Detroit" was not then in existence, but was established in the following month,[4] under the authority and as a branch of the "Catholepistemiad, or University of Michigania," a corporation chartered by the territorial authorities in August, 1817.[5] In 1821, before any of the lands were located, the authorities chartered the University of Michigan.[6] The management and control of the seminary township given to the trustees was limited to the power of leasing the lands for seven years. The university was also made the legal successor of the Catholepistemiad, and as such acquired the title to the three sections of land belonging to the college at Detroit.

[1] See Illinois Laws, 1861, 147. [2] Pillsbury, cxxxv. [3] 7 U. S. Stat., 166.

[4] Its establishment was announced in the *Detroit Gazette*, October 24, 1817. —Ten Brook, 100.

[5] 2 Territorial Laws, Mich., 104. The charter of this institution, besprinkled with strange provisions in stranger language, is a literary and legal curiosity.

[6] 1 Territorial Laws, Mich., 879.

Steps were immediately taken to have the lands located. The three sections were selected and patents were issued for them in 1824.[1] When the location of the seminary township came under consideration an unexpected difficulty arose. The law required the land to be selected from that to which the Indian title had been extinguished previous to 1804.[2] No good complete township which met the requirement could be found. When this became known, the trustees petitioned Congress to take such action as would remove all obstacles in the way of a location of the lands.[3] In 1826 Congress authorized them to select from any public lands in Michigan an amount equal to twice the first reservation, in tracts of not less than a section each.[4] Thus, by the delay in locating the township, Michigan secured better lands, and, like the other States, twice the original amount.

The trustees of the university at once appointed a committee "to examine the country and to report fully their opinion in regard to the location of these lands."[5] As a result of their investigations two sections were located in 1827 and reserved by the proper authorities at Washington.[6] These two sections lay along the bank of the Maumee River, and are now in the heart of the city of Toledo, in the State of Ohio, this region being then a part of the Territory of Michigan. The lands were exceedingly valuable even at that early day, and many attempts to purchase them were soon made by speculators. In 1831 the trustees, under authority of Congress,[7] exchanged the most valuable half of them for a somewhat larger quantity of less desirable lands in the same vicinity. These latter were in 1836, by permission of Congress,[8] sold back for five thousand dollars to the party from whom they had been originally received.[9] At the time of this last transaction the original selection, exclusive of improvements, was worth half a million dollars.[10] The university, by parting with it six years too soon, received the paltry sum of five thousand dollars. The motives which

[1] Ten Brook, 106.
[2] 2 U. S. Stat., 277, Secs. 2 and 5.
[3] Jour. Territorial Council, 1824, 89.
[4] 4 U. S. Stat., 180.
[5] Adams, 2.
[6] Ten Brook, 107.
[7] 6 U. S. Stat., 402.
[8] *Ibid.*, 628.
[9] Gregory, 60.
[10] *Ibid.*, 61.

led the trustees to dispose of these lands, worth more even then than all the rest of the grant, are difficult to understand, and especially so in view of the fact that special action of Congress authorizing the transfer and sale had to be obtained. The transaction has been and always will be regretted by all interested in the prosperity of the university. For the sake of presenting the whole history of the Toledo lands at once, we may look forward a few years. After the State of Ohio assumed jurisdiction over that region it seemed unadvisable for the university to retain the lands subject to taxation by Ohio. Accordingly the remainder of them were sold between 1849 and 1855 at an average price of nineteen dollars per acre. For all the university lands about Toledo, worth in 1859 two or three millions, but seventeen thousand dollars were realized by the institution.[1] This sale of the Toledo lands and that of the three sections reserved by the Fort Meigs treaty for about the same sum were the only ones made before Michigan became a State. The trustees, however, located twenty-three sections of the lands previous to 1836.[2]

After the establishment of the State government the university was reorganized. The property and funds of the old board of trustees were turned over to the new regents of the institution. This property consisted of a lot and academy building in Detroit, purchased with the proceeds of the Fort Meigs lands and private subscriptions. The fund, as already stated, amounted to five thousand dollars. The university lands were vested in the Legislature by act of Congress in 1837.[3] The constitution declared that the proceeds should be and remain a permanent fund for the support of the university, and enjoined it upon the Legislature to provide for the improvement and permanent security of this fund.[4] As in the case of the school lands, so here, the first State Legislature directed the Superintendent of Public Instruction to make an inventory of the lands, to suggest methods of dis-

[1] For a complete history of these transactions, see Gregory, 59–64, or Ten Brook, 107–109.

[2] Ten Brook, 109. [3] *Supra*, 39. [4] Constitution, Art. X., Sec. 5.

posing of them, and to report a system for the organization of a university.[1] The general policy advocated by the Superintendent with reference to all educational lands in the State[2] has already been discussed. He estimated the university lands as worth certainly fifteen and probably twenty dollars per acre.[3] Having decided in favor of selling the lands, he urged that a limited quantity be offered at auction at a minimum price of at least fifteen dollars per acre.[4] The Legislature, after considering this report, placed the management and care of the fund in the hands of the Superintendent, and authorized him to sell at auction, at a minimum price of twenty dollars per acre, so much of the land as should amount to half a million dollars.[5] The proceeds of the sales were to be loaned on the same terms as were provided for the school funds.[6] During the year 1837, over one seventh of the entire grant was sold, at an average price of twenty-two dollars and eighty-five cents per acre, and the prospects seemed excellent for the speedy realization of the million dollars estimated as the value of the grant.[7] The effects of the crisis of 1837 soon blighted these hopes.

The history of the university fund during the next few years shows the same troubles and disasters which were encountered by the school fund. The sales fell off, many lands already sold under contract were forfeited by the purchasers, and the interest on many others was in arrears. The Legislature was urged to reduce the price of unsold lands, and to

[1] Mich. Laws, 1835–6, 49.

[2] *Supra*, 89 *et seq.*

[3] "It is not apprehended that the amount can, in any event, fall short of the lower estimate, while it is believed, judging from the decisions of the past and the indications of the future, that it will exceed the higher computation."—Senate Jour., 1837, Appendix, 71.

[4] "Let the lands in the more settled parts of the State be thrown into market and sold to the highest bidder. What remains unsold might still be kept in market to be sold as occasion should offer."—*Ibid.*, 70.

[5] Mich. Laws, 1837, 209.

[6] *Supra*, 90. The purchaser was required to pay one fourth of the price in cash, and the remainder in instalments. This was subsequently changed to one tenth cash.—Mich. Laws, 1837, 316.

[7] Report of Supt. of Public Instruction, 1837, 71.

adopt measures for the "relief" of those who had already purchased. The history of the legislation on the subject from 1840 is almost identical with that pertaining to the school lands. The prices of both were reduced simultaneously; similar relief was given to purchasers, and the same general mischief was wrought by ill-advised law-making. Whatever was praiseworthy in the one case is equally so in the other, while in both the same criticisms must be offered.

Before any general reduction of prices was made the university became involved in a contest with squatters who had settled upon lands in the western part of the State, which had been selected for the university in 1836,[1] and confirmed to the State for that purpose in 1837. The first threatenings of the struggle were manifested after the lands were located, but before the selections were confirmed. A petition was forwarded to the Governor and the Legislature, remonstrating against the selection of these lands on the ground that many of them had been occupied previously by settlers in the hope that Congress would pass a law giving all such settlers on public lands preëmption rights.[2] By the petitioners' own showing there was not then in existence a letter of law giving them a claim to the land. At the next session of the Legislature, the lands having in the meantime been confirmed to the State, the settlers insisted that their claims should be recognized, because they had settled on the lands before they had been selected for the university; that the selections were not valuable, and that the interests of the university would not suffer by granting the settlers their rights. A legislative committee, after investigating the subject was unable to say that the settlers had a shadow of legal claim, but, accepting the statement of interested parties, decided that the lands were not so valuable as many others in the State[3] which might be selected in their place. On the recommendation of this committee the Legislature passed an act to release the title of the university to sixteen sections

[1] Ten Brook (p. 117) and Adams (p. 4) give this date erroneously as 1830. See preamble of Act of March 30, 1838, Mich. Laws, 1838, 115.

[2] Senate Jour., 1837, Document No. 15.

[3] Mich. Senate Docs., 1838, No. 37, and House Docs., 1838, No. 35.

of the land, provided Congress at its then present session would give the State authority to select other lands in their stead.[1]

It does not seem probable that the university would have lost any thing had this exchange of lands taken place. Congress, however, did not give its assent to the proposition, and the claimants again returned to the attack. In 1839 a bill was introduced to authorize the sale, at one dollar and twenty-five cents per acre, of any university lands which could be shown to have been occupied previous to their location by the State. The regents of the university remonstrated against the passage of the bill, showing that the lands were worth at least twenty dollars per acre; that the claims of the occupants were not only without legal foundation, but actually fraudulent, and that the bill would open the door to a host of equally fraudulent claims in the future.[2] The remonstrance had no effect upon the Legislature, and the bill was passed. Governor Mason refused his assent to it, pointing out that such a disposition of the lands was a violation of the terms of the trust, and that the bill had been pushed through "by a wholesale species of propagandism in search of adventurers to claim the public lands."[3] This defeat of the settlers did not end the struggle.

One more attack was made upon the Legislature, and in 1840 an act was passed authorizing the appointment of three commissioners to examine each claim, and if it appeared that the claimant had actually settled upon the land before it was selected for the university, to appraise the value of the property exclusive of improvements. The claimant was then

[1] Mich. Laws, 1838, 115.

[2] Senate Docs., 1839, No. 32.

[3] House Docs., 1839, 828. "The Congress of the United States 'have granted and conveyed these lands to the State, to be appropriated solely to the *use* and *support* of the University of Michigan.' The State has accepted these lands, and the constitution enjoins 'that the Legislature shall take measures for their *protection* and *improvement*, and also provide means for the *permanent security* of the funds of the institution.' These are the solemn conditions by which the State holds this sacred trust; and yet, by one single enactment, you place all the lands thus held in trust in market at $1.25 per acre, no matter what their value, when located, or how claimed. . . . Can this be a faithful administration of the trust committed to us?"

permitted to purchase the land at this appraised value.[1] This law was purely a compromise in a matter where the legal right was entirely on the side of the State. By its operations over four thousand acres were sold at an average price of six dollars and twenty-one cents, at a time when other university lands sold for over twenty-four dollars an acre. The general impression has always existed that the greater part of the claims were utterly fraudulent, but after this interval of time it is impossible to determine the truth in the matter.

As already stated, the same policy of reduction of price observed in the case of the school lands, was adopted for the university grant. In 1841 the minimum price of unsold lands was reduced to fifteen dollars,[2] and in the next year to twelve dollars per acre.[3] This last law also provided that the associate judges should examine any lands already sold at twenty dollars per acre or over—that is, all lands sold previous to 1841—and appraise their value in their actual condition at the time of sale. The difference between this valuation and the contract price was, as in the case of the school lands, to be credited to the purchaser. The reduction might be any amount not exceeding forty per cent. of the contract price. Under this law thirty-four thousand dollars were credited back to the purchasers in one year, the reduction being nearly forty per cent. in every case.[4] Up to the 1st of January, 1843, by various relief measures and reductions of price, the amount contracted to be paid had shrunk from two hundred and twenty thousand to one hundred and thirty-seven thousand dollars.[5] If such measures were unwise and unnecessary when applied to the school lands, they were doubly so in this case. There was not the same necessity for a university, as for common schools, in the young State. If the lands would have sold at the higher prices by holding them a few years, and every thing indicates that they would, the true policy was to keep the price up. A delay of a decade in the organization of a university cannot be of such moment

[1] Mich. Laws, 1840, 101.
[2] Mich. Laws, 1841, 157.
[3] Mich. Laws, 1842, 45.
[4] Joint Docs., 1843, 210.
[5] "The 13,000 acres of university lands, once sold for nearly $17 an acre, have dwindled down to 10,500, at an average price of less than $12.50."—*Ibid.*, 219.

as to offset a difference of half a million dollars in its permanent endowment.

In 1838 the regents applied to the Legislature for a loan of one hundred thousand dollars for the purpose of erecting buildings for the university. The application was successful, and the money was loaned to the university at six per cent. interest. Both principal and interest were to be repaid from the income of the university fund.[1] At that time it was expected that the lands would sell rapidly, and that the income of the university would soon reach sixty or seventy thousand dollars, from which the loan could easily be repaid. From causes already noted the sales progressed, and the income increased, far more slowly than had been anticipated. The payment of the interest on the loan absorbed the greater part of the annual income of the institution. In 1844 the Legislature relieved the embarrassments of the infant university by adopting a measure which accelerated the sales of land without any reduction in the price. This was accomplished by authorizing the receipt of certain outstanding State warrants in payment for lands. As these warrants could be bought in the market for about fifty cents on the dollar, the actual cost of the land to the purchaser would be but half the legal price. As the State accepted these warrants at par in such cases, and credited the full amount to the university fund, the latter suffered no loss. This law, however, indirectly authorized the eventual payment of the loan from the principal of the university fund.[2] This use of the fund was unconstitutional, as well as contrary to the terms of the grant. However, no objection was made to the provision, and in 1850 the State repaid itself the one hundred thousand dollars by deducting that amount from the fund of the university in its possession.[3]

Had the proceedings stopped here there would be no doubt that the university was relieved from all further obligation in the matter, as there could be none that the last

[1] The State did not have the money in its treasury, and twenty-year bonds were issued to the amount required.—Mich. Laws, 1838, 248.

[2] Mich. Laws, 1844, 18, 117.

[3] Joint Docs., 1850, No. 2, pp. 11, 36; *Ibid.*, 1851, No. 2, pp. 7, 32.

action of the State was unconstitutional. In 1853, however, for reasons not necessary to note here, the Legislature ordered the proper State officers to pay to the university, at stated intervals, "the entire amount of interest that may hereafter accrue upon the whole amount of university lands sold or that may be hereafter sold."[1] That is, the State was to pay interest not only upon the amount of the fund then upon the books, and which the State in accordance with its established policy had borrowed, but also on the hundred thousand dollars deducted in 1850 in payment of the loan. So far as the university was concerned, this latter amount was thus made a part of the fund so long as the act remained in force. This arrangement continued until 1877,[2] when, by authority of the Legislature,[3] one hundred thousand dollars were transferred back to the fund on the books of the State. Thus the fund to-day represents the actual proceeds of all the sales. Evidently the loan has not been paid out of the principal of the fund, and the records show no such payment from the income. It is not probable, however, that the State, which has always been generous with its university, will ever demand repayment of the loan.

When the land-office was established in 1842, the management of the university lands passed into the hands of the Commissioner. Since then the sales have continued uninterruptedly. Many attempts have been made to reduce the price, but fortunately all have failed. The lands are all sold except two hundred and eighty-seven acres, and the fund amounts to $543,317.66.[4] The average price received per acre for the entire quantity sold is eleven dollars and eighty-seven cents,[5] or more than twice that received for any other educational grant in the Northwest Territory.

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[1] Mich. Laws, 1853, 85. [2] See Mich. Laws, 1855, 139; 1857, 154; 1859, 397.

[3] Mich. Laws, 1877, 290. This was a general law authorizing transfers between different accounts on the books of the State preparatory to the adoption of a new system of keeping the accounts. No mention is made of this particular transfer, and the law is no evidence of an intention to give the one hundred thousand dollars to the university.

[4] Report, Supt. of Pub. Instruction, 1882, 18.

[5] Excluding the Toledo lands sold during the territorial days, the average is slightly over twelve dollars.

(*e*) WISCONSIN.

Congress made no reservation for a seminary in Wisconsin until 1838, when in response to a petition of the territory the usual seventy-two sections were set aside.[1] On the same day that the petition was framed by the territorial Legislature a law was passed establishing the "University of the Territory of Wisconsin."[2] This law made no reference to any prospective land grant, nor were the lands applied to the benefit of the institution before Wisconsin became a State. Two thirds of the lands were located by special commissioners appointed by the Legislature in 1840,[3] and the remainder by similar officers appointed in 1846.[4] During the territorial days the trustees of the university organized as a board, but took no measures to establish and open the institution.

The State constitution adopted in 1848 provided for the establishment of a State university "at or near the seat of government," and declared that the lands granted for a university should constitute a perpetual fund, the income of which should be given to the support of this institution.[5] The first State Legislature repealed or amended the law establishing the territorial university, and formally chartered the "University of Wisconsin at Madison."[6] In the same year an appraisal of the lands, together with all improvements made by occupants or claimants, was ordered.[7] About seven eighths of the grant was thus appraised. The values ranged from one dollar and thirteen cents to seven dollars and six cents per acre, the average being two dollars and eighty-seven cents.[8] The report of the appraisers was presented to the Legislature, and in 1849 a law was passed providing for the sale of the lands at auction. The valuation set by the appraisers was established as the minimum price receivable, and previous settlers were given preëmption

[1] *Supra*, 40.

[2] Butterfield, 9. Institutions of the same name had been chartered in 1836 and 1837, but no attempt at organization was made in either case.

[3] Wis. Stat., 1839, 158.

[4] Wis. Laws, 1846, 99.

[5] Constitution, Art. X., Sec. 6.

[6] Wis. Laws, 1848, 37.

[7] *Ibid.*, 123.

[8] Butterfield, 50. Assembly Jour., 1850, 499, 500.

rights at this price.[1] The proceeds, as in the case of the school lands, were loaned to individuals on real-estate mortgages.

It is needless to enter again into the question of the best policy to be observed by a State in managing lands held in trust for higher education. If it is decided that the lands should be sold as soon as possible, no measure can be fairer than one which offers them at their appraised value, provided a fair appraisal can be obtained. There is reason to believe that the appraisal in Wisconsin was not entirely honest,[2] though in some cases the prices fixed were high enough.[3] Many lands were sold during the first year, but the next Legislature held the sound opinion that it was better to accumulate a large fund, even though the sales were less rapid, than to sacrifice the lands for the sake of an immediate fund. The minimum price was accordingly raised to ten dollars per acre.[4] The sale of more than a thousand acres in the next twelve months at an average of over ten dollars showed the wisdom of the step.

But the policy of the State had become firmly settled in favor of using trust lands to attract immigrants. These slow sales were contrary to that policy, and strong pressure was brought to bear on the Legislature to reduce the price again. The prominent argument used was, of course, that the interests of the university would be advanced by faster sales at lower prices and the more speedy accumulation of the fund.[5] The committee of the State Senate did not, however, favor a reduction, preferring to hold the lands until they should be worth the established price, as they must be sooner or later.[6] The Legislature differed with the com-

[1] Wis. Laws, 1849, 149.

[2] This is shown by the fact that the average appraised value of the sixteenth section school lands was $3.66, while that of the university lands, which were selected lands and hence more valuable, was but $2.87 per acre.

[3] See letter of Stoddard Judd in Assembly Jour., 1850, 999.

[4] Wis. Laws, 1850, 144.

[5] The letter of Stoddard Judd, already cited, says: "I have no hesitation in giving it as my opinion that every interest of the State University . . . would be both now as well as hereafter promoted by an entire and total repeal of the law," fixing the minimum price at ten dollars per acre.

[6] Senate Jour., 1851, 468.

mittee, and reduced the price to seven dollars per acre, except where the land had been appraised at a higher value in 1848. Occupants were given preëmption rights to purchase at the appraised value in all cases. All preëmptors who had purchased lands at more than the appraised value were credited back all excess over that value.[1] "The effect of this legislation was to secure the university lands to preëmptors at prices, on the average, far below the minimum price as fixed by the law of 1850, or even that of 1851. Immigration was thus encouraged, but at the expense of the vital interests of the university."[2]

The mania for selling the lands had by this time taken such hold upon the State that any law which did not succeed in attracting purchasers at once was deemed a failure. The next Legislature, urged by various petitions and the advice of a committee,[3] adopted a new measure for hastening sales. The Governor was authorized to appoint commissioners to re-appraise the unsold lands. None were to be appraised at less than three dollars per acre, and the value as estimated by the commissioners was to be the minimum price.[4] Under these provisions the lands were appraised, the greater part of them being valued by the commissioners, in pursuance of the hint given in the law, at three dollars per acre. At these prices they were in great demand[5] and were soon sold. The proceeds of the forty-six thousand acres amounted to about one hundred and fifty thousand dollars.

While passing laws for selling the lands at low prices the Legislature, realizing the effect which such sales would have on the ultimate fund, petitioned Congress for seventy-two sections more for the university in lieu of the saline lands granted to the State in 1848 but never located.[6] As already stated,[7] Congress complied with this petition in

[1] Wis. Laws, 1851, 419.

[2] Butterfield, 56.

[3] The committee concluded their report with the following opinion: "To ensure the sale of any considerable portion of the university lands a further reduction in the price is necessary. As the law now stands none can be sold except on preemption for less than seven dollars per acre, which *at present* operates nearly as a prohibition of sales."—Appendix to Journals, 1852, 202.

[4] Wis. Laws, 1852, 769.

[5] Governor's Message, 1854, 9.

[6] Wis. Laws, 1851, 438.

[7] *Supra*, 41.

1854. The Legislature now had an opportunity to atone for the errors by which the former grant had been sacrificed. But the policy of the State had become fixed, and many of the lands were appraised and offered for sale on the terms established by the law of 1852. In 1859 the clauses providing for appraisal were repealed, leaving the minimum price of all unsold appraised lands at three dollars.[1] In 1863 the price of all lands once offered for sale without finding a purchaser was reduced one third,[2] and in 1864 the price of all lands which had never been appraised was fixed at three dollars per acre.[3]

No voice seems to have been raised against these laws until it was too late to correct the evil. In 1871 the opinion was ventured that the State, and not the university, had received "whatever benefit may have been derived from such sales."[4] In 1872 the Governor arraigned the policy which had prevailed, and asserted that nine tenths of the value of the fund had been sacrificed by hasty sales at low prices.[5] In the same year, the Legislature, in the preamble of an act making an appropriation for the university, formally condemned the whole policy hitherto pursued, and confessed that it was too late to effect any benefit by a change.[6]

[1] Wis. Laws, 1859, 226. [2] Wis. Laws, 1863, 431.

[3] Wis. Laws, 1864, 514. The constitution required an appraisal of all lands before they were offered for sale. It is difficult to see how this law and the constitution can be reconciled.

[4] Report, Supt. of Pub. Instruction, 1871, 22. [5] Governor's Message, 1872, 17.

[6] The preamble reads:

Whereas, It has hitherto been the settled policy of the State of Wisconsin to offer for sale and dispose of its lands, granted by Congress for educational purposes, at such a low price per acre as would induce immigration and location thereon by actual settlers; and

Whereas, Such policy, although resulting in a general benefit to the whole State, has prevented such an increase of the productive funds for which such grants were made as would have been realized if the same policy had been pursued which is usually pursued by individuals or corporations holding large tracts of lands; and

Whereas, The university fund has suffered serious loss and impairment by such sales of its lands, so that its income is not at present sufficient to supply its wants, and cannot be made so by any present change of policy, inasmuch as the most valuable lands have already been sold, therefore," etc.—Wis. Laws, 1872, 114. See also Report of Regents, in Wis. School Reports, 1874, 85, 86.

Finally, in 1876, the Legislature, in voting a permanent tax for the support of the university, put on record another lasting condemnation of its earlier policy, by declaring that this tax should be deemed "a full compensation for all deficiencies arising from the disposition of the lands donated to the State by Congress in trust for the benefit" of the university.[1] Thus the mismanagement of earlier days has entailed on the present and all succeeding generations a burden of taxation to compensate for early prodigality.

But the fund was impaired in another way, and for several years the result of the impairment promised to be permanent. In 1862 the Legislature authorized the regents to use the principal of the fund to pay off indebtedness incurred in the erection of buildings.[2] In accordance with this act $104,339.42 was taken from the fund.[3] This act was clearly in violation of the conditions of the grant, and of the provisions of the constitution, by both of which the proceeds of the land were to form a permanent fund for the support of the university.[4] In 1867 the Legislature authorized the annual payment by the State of seven per cent. on the amount thus wrongfully taken from the fund,[5] and this sum has, since 1876, been included in the permanent tax levied for the benefit of the university. About twenty-two hundred acres are still unsold,[6] and the fund is $228,438.83,[7] which is invested in government and municipal bonds, and in loans to various counties. Including the money used for the erection of buildings, the proceeds of the sales are $333,778.25, or an average of three dollars and seventy-one cents per acre.

C.—AGRICULTURAL COLLEGE GRANT.

(*a*) OHIO.

When Congress passed the Agricultural College bill all the public lands in Ohio had been sold, hence the State received scrip for the six hundred and thirty thousand acres to which

[1] *Apud* Whitford, 71.
[2] Wis. Laws, 1862, 168.
[3] Whitford, 69.
[4] See Governor Washburne's Message, 1872, 17.
[5] Whitford, 70.
[6] Report, Com. of Pub. Lands, 1882, 6.
[7] Report, Sec'y of State, 1882, 12.

she was entitled.[1] Under the terms of the grant the State was prohibited from locating this scrip,[2] and it was supposed by many that the only method of utilizing it was to sell it for the best price obtainable. This was a manifest disadvantage, for so long as public lands were abundant in the United States, the scrip could by no possibility become worth more than the cash price of government lands—that is, one dollar and a quarter per acre. The expedient adopted by a few States of transferring the scrip to the trustees of the college, by whom it could be located and the land held so long as was deemed advisable, did not suggest itself to the Legislature of Ohio.

In 1865 the Auditor, Secretary of State, and Treasurer were authorized to offer the scrip for sale, but to accept no proposition at less than eighty cents an acre.[3] On the proceeds of the sale, which were to be placed in the treasury, the State was to pay six per cent. interest. Though the minimum price thus fixed was but sixty-four per cent. of the nominal value, it was not far from the actual market value of the scrip at the time, owing to the vast quantities then obtainable from the different States. Offers were made to the commissioners for the purchase of the entire quota of Ohio at eighty cents per acre, provided a short credit would be given for the payment.[4] This the commissioners decided they were not authorized to grant, and no sale was made. The General Assembly at its next session removed the limit on price, and instructed the commissioners to sell the scrip "at the best price they can obtain for the same," and to make "prompt and vigorous efforts to effect the sales." Where scrip for ten thousand acres was purchased by any party, payment might be made in instalments covering a period of three years, and any one purchasing fifty thousand acres was allowed six years in which to make payments.[5] Under this law the entire amount was soon sold for $340,906.80, all but seventy thousand acres being sold at fifty-three cents per acre.[6] This enormous falling off from the

[1] Document A, 230. [2] 62 Ohio Laws, 189. [3] 63 Ohio Laws, 139.
[3] *Supra* 24 and note 1. [4] Education in Ohio, 205. [6] Education in Ohio, 206.

offers of the previous year caused the Legislature to call upon the commissioners to state "why the land scrip belonging to the State was sold, part of it on time, for less than fifty-three cents an acre, while the government was selling lands at one dollar and twenty-five cents an acre." The commissioners promptly denied that any had been sold for "less than" fifty-three cents, and defended themselves on the ground that they were instructed to make "prompt and vigorous efforts to sell at the best price obtainable."[1] With this reply the matter ended. This magnificent gift, like the others received by the State for educational purposes, was sacrificed by an undue haste in turning it into money. The scrip had been sold before any college was incorporated to take the benefit of the grant, but in 1870 the income of the fund was bestowed upon the Ohio Agricultural and Mechanical College, better known as the Ohio State University.[2] The college was located in October, 1870, in the suburbs of Columbus, the county of Franklin giving three hundred thousand dollars for the erection of buildings and equipment of laboratories. The fund arising from the sale of the scrip had in the meantime been accumulating in the treasury,[3] and by the time the college was opened had increased to over four hundred thousand dollars.

In 1872 the State gave to the college certain lands, which it had just received from Congress,[4] and ordered their sale at public auction after a careful appraisal.[5] Something over twenty thousand dollars has been received from them, and some are still unsold.[6] The proceeds of these sales are added to the fund belonging to the college, all of which was, in 1877, made a part of the irreducible debt of the State, with interest payable semi-annually.[7] Portions of the income have for some reason been withheld from the use of the college and added to the principal until the latter has increased to $558,529.[8]

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[1] *Ibid.* [2] 67 Ohio Laws, 20. [3] 67 Ohio Laws, 15. [4] *Supra*, 34.
[5] 69 Ohio Laws, 52; 70 Ohio Laws, 107.
[6] Up to November, 1881, the receipts were $20,506.63. Exec. Docs., 1881, Part I., 184. [7] 74 Ohio Laws, 101. [8] Auditor's Report, 1882, 17.

(*b*) INDIANA.

In Indiana, as in Ohio, there were no public lands when the grant was made, and the State received her quota of three hundred and ninety thousand acres in scrip. In 1865 trustees of the "Indiana Agricultural College" were appointed and made a body corporate with power to sell the land scrip "at such times and in such manner as shall be most advantageous to the State."[1] The act made no provision for the establishment of a college, but simply constituted proper authorities to dispose of the grant. It was provided in the law that the proceeds of the sales should be invested in United States bonds bearing not less than five per cent. interest, and that the interest should be invested in a like manner as fast as it accumulated until the Legislature should make some further provision for establishing a college in accordance with the requirements of the act of Congress. The trustees sold the scrip at an average price of fifty-four cents an acre.[2] The proceeds, amounting to $212,238.50, were invested as the law directed. The reasons which induced the trustees to dispose of the scrip at this price, I have been unable to learn.

No agricultural college was organized until 1869, when one was established near La Fayette, under the name of Purdue University, in honor of a gentleman who gave to it one hundred and fifty thousand dollars and a hundred acres of land for a site. To this gift Tippecanoe County added fifty thousand dollars. The donations were used for the erection of buildings, but the university was not opened until 1873. In the meantime the fund had increased by the accumulations of interest. In this way the effect of the hasty sales was partially counterbalanced, though the present fund of three hundred and forty thousand dollars[3] represents but eighty-seven cents an acre for the grant.

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[1] Indiana Laws, 1865, 106.

[2] President Owen erroneously states it at "sixty cents to the dollar," which would have been seventy-five cents an acre.—See Report, Supt. of Pub. Instruction, 1872, 134.

[3] Report, Supt. of Pub. Instruction, 1882, 179.

(*c*) ILLINOIS.

Illinois received the four hundred and eighty thousand acres of land to which she was entitled, in the form of scrip. In 1867 the Legislature created the Illinois Industrial University, and transferred the land scrip to the trustees as an endowment fund for the new institution. Under the act of Congress making the grant, these trustees had the right to locate the scrip. Had the trustees sold half the grant, the income would have been sufficient for the immediate needs of the college. Then by judiciously locating the rest, and selling the lands gradually as they increased in value, a vast fund might have been produced. This plan seems to have been favored at the outset, and twenty-five thousand acres were located in Minnesota and Nebraska.[1] Then, for some reason, the trustees adopted the other plan, and sold the rest of the scrip at seventy cents an acre, realizing from the sales $319,178.87,[2] which was invested in State and county bonds.

The university was located in Champaign County, and received from the county about four hundred thousand dollars in farms, buildings, and money for the construction of other buildings.[3] The Minnesota and Nebraska lands have not been sold and are rapidly increasing in value. It is not improbable that, though they constitute but one twentieth of the original grant, they will produce over one third as much as was derived from the entire amount of scrip sold.

(*d*) MICHIGAN.

In Michigan the establishment of an agricultural college preceded by several years the grant of lands by Congress. The constitution of 1850 required the Legislature to provide for such an institution as soon as practicable,[4] and at the session of 1853 a bill to organize the college passed one branch, but failed to reach consideration in the other. In 1855 an act was passed establishing the college, and appro-

[1] Pillsbury, cxliii.
[2] *Ibid.*
[3] Illinois School Report, 1877–8, 171.
[4] Constitution, Art. XIII., Sec. 11.

priating twenty-two sections of the saline lands for the purchase of a site and the erection of buildings.[1] The proceeds of the lands amounted under existing laws to nearly sixty thousand dollars. With this and forty thousand dollars appropriated by the Legislature the college was organized and equipped. From this time until the grant was received from Congress and rendered available, the institution was supported by legislative appropriations. The State was urged to give to the college a considerable portion of the proceeds of the swamp lands, but contented itself with granting those situated in the four townships adjoining the college. These amounted to six thousand nine hundred and sixty-one acres,[2] and were subsequently sold for $42,396.87,[3] and the proceeds used for various needs of the college.

When the Congressional grant was made the Legislature placed the selection and disposal of the lands in the hands of a board known as the Agricultural Land Grant Board, and put a minimum price of two dollars and fifty cents per acre upon them.[4] Commissioners were sent out by the board to examine the eligible public lands in Northern Michigan. For some reason, possibly upon the supposition that lands selected for the endowment of an agricultural college should be farming lands, the board carefully abstained from locating any tracts of pine, which are now the most valuable lands in that part of the State.[5] Those chosen

[1] Mich. Laws, 1855, 279. There were seventy-two sections of saline lands belonging to the State. In 1846 a minimum price of four dollars an acre had been placed upon them. (Revised Stat., 1846, chap. 60.) The proceeds of twenty-five sections were used in erecting buildings for the asylum for the deaf, dumb, and blind. (Mich. Laws, 1848, 246; 1849, 137; 1850, 334.) Twenty-five sections were given to the Normal School as an endowment fund. The proceeds of these last, with the exception of eight thousand dollars used for the erection of a building, were to be borrowed by the State at six per cent. interest. (Mich. Laws, 1849, 157, 221; 1850, 127.) The last of these sections was sold in 1868, and the total fund of the school is $69,126.04. (Report, Supt. of Pub. Instruction, 1882, 19.) The remainder of the original grant is accounted for above.

[2] Joint Docs., 1858, No. 7, 33.

[3] Governor's Message, 1883.

[4] Mich. Laws, 1863, 201.

[5] It is related that when the commissioners were on the eve of starting out to search for eligible lands, one of the members of the board suggested the propriety of their seeking only agricultural lands, as the grant was for an agricul-

were, however, of good quality. The patents were obtained for them in 1868, and the board raised the minimum price to five dollars an acre.[1] Very few were sold during the first year, and the Legislature, leaving the price of timber land at five dollars, reduced that of all others to three dollars an acre.[2] A considerable quantity was sold at these prices. In 1880, upon the suggestion of the Commissioner of the State Land Office, the board raised the price to five dollars per acre.[3]

By the law of 1863 it was provided that the proceeds of the sales should be invested in stocks yielding not less than five per cent. interest.[4] This was a mere compliance with the conditions under which the grant was held. In 1871 it was ordered that the receipts be placed in the treasury, and that the State pay seven per cent. interest thereon.[5] Of the two hundred and forty thousand acres which the State received, one hundred and thirty-four thousand, or considerably more than half, are yet unsold.[6] The average price received for those sold is three dollars and forty-seven cents an acre, and the fund is $367,117.24.[7] The remaining land is of good quality, and if the minimum price now established is adhered to, as it should be, the ultimate fund cannot fall short of a million dollars.

(*c*) WISCONSIN.

In 1863 the Governor of Wisconsin was authorized by the Legislature to appoint commissioners to select the two hundred and forty thousand acres of land to which the State

tural college, *but that if they saw any good pieces of pine they might make a minute of their situation.* Upon the return of the commissioners with a long list from which the board might select, the farming lands were chosen for the college, while the member of the board who had offered the advice at the outset shortly afterward became a large purchaser of pine lands, which have since become extremely valuable. The State in one of its latest advertisements of the lands says "they were carefully selected for farming lands."

[1] Smith, 79.

[2] Report, Commissioner of Land Office, 1882, 6.

[3] Mich. Laws, 1869, 51.

[4] Mich. Laws, 1863, 201.

[5] Mich. Laws, 1871, 87. Slightly amended in 1875.

[6] January 1, 1883, the State still owned 134,249 acres. 4,337 acres of the grant are not yet located.

[7] Report, Supt. of Pub. Instruction, 1882, 18.

was entitled.[1] The commissioners located the lands in seven of the newer counties of the State,[2] and the selections were approved by the Secretary of the Interior. In 1866 the University of Wisconsin was re-organized, and a college of arts, embracing instruction in agriculture, mechanics, engineering, and kindred industrial arts, was established in connection with it. The income arising from the Agricultural College grant was pledged to the university as an endowment in addition to that which she already had from the seminary lands.[3] At the same time it was ordered that the lands be immediately offered for sale at public auction at a minimum price of one dollar and twenty-five cents per acre.[4] Once offered at auction and not sold, they were subject to private entry. Since then the price has remained unchanged, and the greater part of the lands has been sold at the legal rate.

Thus again the Wisconsin policy manifested itself. After selecting the best lands which the commissioners could find, the State might reasonably have placed a higher price upon them than was asked by the United States for lands. Instead of doing so she offered them for sale on better terms for the purchaser than those given by the United States, for while the latter sold all lands for cash, the State disposed of hers at the same price on credit. She could hardly have done less in execution of the trust without violating it; she ought to have done far more.

While Wisconsin has been selling her lands for a beggarly dollar and a quarter per acre, Michigan has been receiving three and five dollars per acre for lands obtained under the same grant. Starting with the same number of acres, Michigan, as already stated, has a fund of $367,000, and 134,249 acres still on hand, valued at five dollars an acre; Wisconsin has accumulated a fund of $279,689.84,[5] and has sold all but 19,889 acres,[6] which are held at one dollar and

[1] Wis. Laws, 1863, 408.
[2] Butterfield, 106.
[3] Wis. Laws, 1866, 153.
[4] *Ibid.*
[5] Report of Commissioners of Public Lands, 1882, 21, 24. This, like the other educational funds of Wisconsin, is invested in United States and municipal bonds and in loans to various counties.
[6] *Ibid.*, 20.

twenty-five cents an acre. Michigan's ultimate fund will be a million dollars, while Wisconsin's will not much exceed three hundred thousand, and can by no possibility become as large as the fund which Michigan has derived from less than one half of her grant. Since the two States received, at the same time, the same amount of land of a similar quality, the above comparisons afford a most striking illustration of the results of the two ways of managing lands granted for educational purposes.

D.—CONCLUSION.

Thus far the chief object has been to present the raw material of historical facts, and to that end I have traced the origin, management, and disposition of every grant made to the States of the Northwest Territory for the purpose of fostering education. Occasional criticisms have been passed, and, in a few instances, the good or bad features of a single measure or a particular policy have been indicated. It remains to take a general survey of the subject, to decide whether the cause of education has derived the utmost possible good from the federal aid, to indicate the leading causes of trouble encountered, and to draw a few conclusions from the experience of the five States.

Viewed from the standpoint of the existing tangible funds, there can be no question that a greater amount of money might have been realized from the grants. It is needless, after the facts presented in the foregoing pages, to enter into any proof of this. When good lands have been sold for from fifty cents to one dollar and a quarter an acre; when portions of the proceeds have been lost by poor investments or by embezzlement; when speculators have jumped at the opportunity of purchasing at the prices fixed, and have made fortunes by reselling the lands shortly afterwards at greatly increased prices, that might have been obtained by the State itself, few will deny that the funds might have been made larger. But we must not fall into the error of assuming that a wise or unwise management of an educational grant is to be determined solely by

the amount of money which the State derives from it for a permanent fund. The factors in the problem are more numerous, and the process of solution far more complicated, than that which comes before the ordinary real-estate dealer seeking to derive the greatest number of dollars from the fewest possible acres of land.

The grants were made for the support of schools and colleges, not during the life of one generation, but of all succeeding generations—the earliest and the latest. The first thought, then, would be to sell the land as soon as purchasers could be found, in order that the first generation might derive a benefit from it. But the income, if sufficient to afford school facilities for the children of that generation, would fall far short of the needs of the next and more numerous. On the other hand, to retain the lands unsold for three or four decades would deprive the earliest generation of school-children of all benefits of the fund. If, in this dilemma, we seek to ascertain the intention of the grantor we shall find ourselves no nearer a solution. The fact that the first school reservations were made as an inducement to purchasers would seem to indicate that Congress designed the grants to be used by those who were brave enough to venture into the territory when it was a wilderness, and by buying land from Congress assist in relieving the financial pressure under which the country was groaning. But this presumption is destroyed by the fact that in early days a State was not permitted to dispose of its educational lands, and that a whole generation had passed away before Congress allowed them to be sold.

The acts of Congress under which the grants were held by the older States provided that certain land be reserved or granted "for the maintenance of common schools," or a college, thereby showing that it was intended to create a permanent fund. It is doubtful, however, if any member of the Congress of the Confederation had a well-defined plan for utilizing the grant. Whether the resultant fund should be large or small, whether the grant should be immediately turned into money, or be disposed of slowly, in order to ac-

cumulate a larger ultimate fund, became, therefore, questions of state policy simply.[1]

The argument in favor of an early sale of the grants is based on the theory that a little money for the maintenance of schools and colleges in the infancy of a State, when the people are poor, is of more service than a far larger sum at a later day, when the accumulations of wealth enable a large part of the necessary support for education to be raised by taxation. This theory, if sound at all, can apply only to primary or common schools, for the circumstances can never exist which make it wise to sacrifice the ultimate endowment of a college or great university for the mere sake of opening the institution a few years earlier. No one will deny that Ohio University would be far stronger to-day, and better fitted to perform its work, if its lands had not been disposed of before the year 1835. And there were opportunities elsewhere sufficiently near at hand where the few youths who composed its first twenty classes might have obtained instruction. Nor is the theory universally sound when applied to the common schools. One may admit the general truth of the statement that a little help at the beginning counts for more in the end than greater assistance at any one time thereafter. But this is not admitting the right of those in existence when an educational grant is made to despoil the heritance of the coming millions for the sake of lessening the burden of providing their own children with an education.

In the early days of a State the inhabitants are few and the school-children are not numerous. The State is certainly unwise if, for the benefit of these, it undertakes to sell all its school lands, those in the remote and sparsely settled regions as well as those near its centres of population, for

[1] "Whether the public fund shall be ample or meagre, whether it shall be sufficient to place our schools and seminaries of learning on high and elevated ground, or leave them to pine and droop, will depend in a great measure on the course that shall be adopted in respect to them. It is a fund which ought to be held sacred, and religiously regarded. Its benevolent object is to promote the best good of the State in all future time."—Report of Superintendent of Public Instruction; Senate Jour., Mich., 1837, Appendix, Document 7, 67.

such prices as the current demand will obtain. Shall the first generation, as in Illinois, go free of school taxes because those who come later can better afford to pay? Would it have been just to the present generation if Wisconsin, in 1836, had obtained, from Congress, as some of her legislators desired, a cash grant for schools equal to one dollar and a quarter per acre in place of the lands themselves? On the other hand each generation has the right to demand that its interests shall not be sacrificed to those of its successors. For a State Legislature at the outset to set a price on the land far above its value would perhaps be as unjust as deliberately to undervalue all the lands.

What, then, is the happy medium? Is it possible even abstractly to mete out equal justice to all, and to discover any definite rule by which to proceed? My study of the question leads me to believe that it can be done, and that Superintendent Pierce of Michigan formulated it roughly in 1837, when he recommended that the lands be sold "gradually as the wants of the country and a sound discretion might seem to require," and when he maintained that the disposition of the lands would be the wisest that would ultimately yield the greatest amount of revenue for the support of schools, and at the same time provide so soon as possible for the education of those then of school age.[1] This statement needs precision and definiteness to make it applicable in practice, but it contains a correct principle. If the school lands are to be sold, let them be disposed of, the most valuable first, in such quantities and on such terms that as nearly as may be each of the earlier generations shall derive an income approximately equal to what the rents of the rentable school lands would afford at that time. In a new State rents will gradually appreciate for many years, and when they cease to rise no larger income will accrue in the future. If now the educational lands are leased under proper restrictions until that time, equal justice is done to all beneficiaries. If the State prefers to begin at once with sales in fee, the same result will be brought about by fixing as a minimum price of

[1] Senate Jour., Mich., 1837, Appendix, Document 7, 68, 70, 74.

the entire grant the present value of the choicest lands. As the population increases and settlements are made, the outlying land will rise in value to the fixed minimum, and will find ready sale. In the meantime, until it is worth that price, it can be leased on such terms as are thought wise or possible.

This system would produce an income approximately equal to the average rent. It is the plan at the bottom of the system of Michigan, beyond question more successful than any other State in dealing with the problem, though unfortunately the original plan has suffered at the hands of later legislators. It is essentially the system pursued by Nebraska, which, by its constitution, has forbidden sales of educational lands for less than seven dollars an acre, and has ordered that they be rented until they attain that value.[1] This plan is not a mere theory, and can easily be carried out. It was as practicable in 1802, when Ohio first attacked the problem, as it is to-day for Nebraska and other Western States.

Taking the results that would have been attained by a strict adherence to this or a similar plan, as a criterion by which to test the results actually reached in the five States under consideration, one is forced to admit that the States of the Northwest Territory have failed to handle their educational lands to the best advantage. Some States have made more serious mistakes than others, but no one of them is entirely blameless. There has been one disturbing factor, however, impossible of complete elimination in the actual working of the problem, that did not appear in the theoretical solution. So long as lands of the United States are abundant in a State, it is difficult to lease educational lands, and impossible to sell them for more than the price of government lands, except in the settled portions of the State, unless some great inducement in the way of easy terms of payment be offered. No man will pay five or ten dollars in cash for an acre of school or university land, if he can purchase equally good government land in the same locality for one dollar and twenty-five cents an acre. Several of the States

[1] Constitution of Nebraska, Article VIII., Sec. 8, 9.

succeeded in reducing this troublesome element to comparative insignificance by offering educational lands on long credit. To the almost moneyless immigrant this was a convenience sufficient to make him willing to pay a far higher price than if immediate payment had been demanded.[1]

After making all necessary allowance for such disturbing elements, it will be found that the present condition of the funds is due almost solely to causes for whose existence and potency the Legislature and the people are directly responsible. These causes are neither obscure nor difficult of analysis. Some of them have been indicated in the preceding pages, but may be restated here.

First: *An undue haste in selling the lands.* The best evidence of this is that in most of the States prices have been several times reduced, because sales were not progressing with sufficient rapidity to satisfy the Legislature. One of the Western States has attempted to guard against this evil by forbidding any sale of school lands until sales are authorized by a vote of the people of the State at a general election.[2] Another has provided that the educational lands shall not be sold for a certain number of years after the adoption of the constitution.[3]

Second: *Careless legislation and lack of restrictions on the Legislature.* Many carelessly framed and ill-advised laws have been adopted, leaving loop-holes for fraud and for false and unfair appraisals of the land. No constitutional restrictions having been placed on the law-making power, the Legislatures have been enabled to fix any price they have desired upon the lands, and as a result absurdly low prices have been established. In short, the trusts have been subject to the caprice of ever-changing and fickle-minded bodies of public servants. Some of the younger States have provided effectually against this evil by constitutional enactment fixing the lowest price at which educational lands may be sold.[4]

[1] As these deferred payments bore interest, the transaction was for the State both a sale and an investment of the proceeds.

[2] Constitution of Kansas, Article VI., Sec. 5.

[3] Constitution of Minn., Article VIII., Sec. 2.

[4] See Constitution of Nebraska, Article VIII., Sec. 8.

Third: *Failure to guard and invest properly the moneys received from the land sales.* It has been shown that many of the provisions for the investment of the funds have been of a lax and unbusiness-like character, and as a result losses, easy of avoidance with proper care, have been of common occurrence. Then, too, in several instances the lack of any checks upon the officials who have had the handling of the funds has resulted in dishonesty and embezzlement. This phase of the subject should have received the most careful attention, for however discreditable it may be to human nature and to morality, it is certain that public trust funds have come too generally to be treated as exempt from the operation of the eighth commandment. While theoretically the most sacred of all public funds, they are really the most liable to mismanagement and plunder. Costing the people nothing, they are not subjected to the same watchful scrutiny as other funds. Every thing realized from them is regarded as clear gain, while what is taken from them, either directly or indirectly, is hardly felt as a loss.[1]

The people of Indiana learned this after a hard experience, and in their constitution, adopted in 1851, made each county responsible for the safe handling of the portion of the fund in its possession, and required it to make good all losses. The constitutions of Nebraska and Colorado also require the State to "supply all losses that may in any manner accrue" to the educational funds.[2] While these provisions will not prevent dishonesty on the part of officials, they are effectual in protecting the funds. Many of the newer States and some of those in the Northwest Territory have also adopted constitutional provisions requiring all educational moneys to be invested in certain classes of securities. The educational funds of Texas, for example, can be invested only in bonds of the United States or of the State of Texas,[3] while

[1] "All history shows that charitable funds, unless faithfully protected by public authority, become subjects of the very greatest abuse."—Legislative Documents, Ohio, 1838, II., No. 17.

[2] Constitution of Nebraska, Art. VIII., Sec. 9. Constitution of Colorado, Art. IX., Sec. 3.

[3] Constitution of Texas, Art. VII., Sec. 6.

in Nebraska the investments must be in United States or State securities or registered county bonds of Nebraska.[1]

The policy adopted by many of the States, of borrowing the educational funds at a fixed rate of interest, and making the loan permanent, has already been alluded to.[2] While it renders the fund secure and the income steady, the wisdom of any system must be questioned which subjects the people to a perpetual tax to pay the interest on loans made for the benefit of a single generation of their predecessors. In Ohio and Michigan, for example, the school funds have been permanently borrowed by the State and used to defray various expenses of the government. To-day the entire support for schools in those States is raised by taxation, and the school funds are purely ideal, constituting merely a moral and legal obligation on the people, to lay an annual tax forever, sufficient to pay the interest on the funds spent by their ancestors.

Fourth: *The general indifference of the people to the whole subject.* Upon receiving the grant from the General Government, the people were usually content to place in their constitution some finely phrased general statement, declaring that the trust should form a perpetual fund, and should be preserved inviolate. This done, the matter was left to the Legislature and State officers. The subject was not one to attract popular interest, and even the legislators themselves gave it little thought, save when they received petitions asking for some change, and a change, it must be borne in mind, invariably meant either a reduction in price or relief from past contracts.[3] The *ex-parte* statements of petitioners have generally been accepted, and the desired legislation passed. The citizens, as a whole, have paid not the slightest attention to a matter affecting the entire State, and involving hundreds of thousands of dollars. What was every-

[1] Constitution of Nebraska, Art. VIII., Sec. 9. Nebraska has erected many safeguards for the protection of her educational trust funds, and her constitution is worthy of study on these points.

[2] *Supra*, 76, 99, 113, and especially 84, note 1.

[3] I have run across but a single petition asking for an increase in the price of the land, or suggesting any thing for the benefit of the fund.

body's business became, as usual, nobody's.[1] The only remedy for this evil seems to be the establishment of certain definite regulations in the State constitution, since when a constitution is framing, and then only, is any popular interest in the subject likely to be manifested.

Fifth: *Special legislation.* A sufficient number of instances where special laws have been passed, always against the interests of education, have already been mentioned, such as relief laws, reduction of price in special cases, and repeal of revaluation clauses for particular townships. So long as special legislation is tolerated in such matters it must be expected that the cause of education will suffer. The remedy is simple, and, the younger States are beginning to apply it, by forbidding all special legislation in matters affecting the school funds.[2]

Sixth: *The attempt to divert educational funds from their proper object, or so to dispose of the lands as to accomplish other State purposes to the injury of the cause of education.* This evil has appeared openly in but two of the States—Illinois and Wisconsin. In the case of the former the seminary lands were thrown into the market at an extremely low price, more than a quarter of a century before any college was endowed or organized. The motive in selling the lands was unquestionably that the State might obtain money to meet its expenses without resorting to increased taxation. So flagrant an abuse can hardly occur in this day and age.

The other instance is the fixed and avowed policy of Wisconsin of offering her educational lands at low prices in order to attract immigrants. This policy has already been criticised in the sketch of the legislation of Wisconsin. There are those, however, who maintain that the State acted wisely; that she swelled her population, thereby adding to her wealth; and that, though the proceeds of her land grants are less than they might have been, her increased wealth

[1] "We have been the passive recipients of the bounty of the United States, and have by our *neglect* and mismanagement wasted thousands of dollars of this bounty."—Debates, Constitutional Convention, Indiana, 1851, p. 1891.

[2] See constitution of Oregon, Art. IX., Sec. 23; also the present constitution of Indiana, Art. IV., Sec. 22.

enables her to make good the deficit by annual taxation. This theory omits all notice of the fact that it is not generally considered lawful to use trust property in any other way than that specified in the instrument creating the trust, even though the trustee may see that by handling it differently he can profit the beneficiary more. But the theory itself is not confirmed by facts. The reports of the Land Commissioners and of legislative committees in Wisconsin show that, though much land was sold at the low prices established, the greater part of it was bought by speculators, who resold it to the actual settlers at far higher prices. There is nothing to indicate that the policy had any direct effect in attracting immigrants. The great quantity of government land and the natural advantages of soil and climate were far greater influences in that direction.[1] In any aspect of the question it seems almost beyond doubt that the State threw away a large part of her educational endowment.

While such uses of the federal grants are not likely to be made by other States, there are no certain means of preventing similar semi-diversions of the trusts from their proper objects. The only safeguard is a public sentiment that will not permit the spirit of a trust to be violated under cover of conformity with the letter.

It would be unjust to the five States under consideration to omit all reference to the good results which have flowed from their various land grants. Even though much has been wasted, through causes for which the States were wholly responsible, the grants have been instrumental, in a degree that cannot be estimated in mere dollars and cents, in promoting the cause of education. It is doubtful if with

[1] The view that the low price of educational lands had no perceptible effect on immigration seems to be borne out by the figures of the United States census reports, which show that the percentage of increase in population in Wisconsin over that in Michigan (a State of equal advantages and similarly situated) was greater in the decade from 1840 to 1850, when Wisconsin had not commenced selling her lands, than it was from 1850 to 1860, during which decade half her school lands passed into the hands of purchasers.

the wisest management the school land could have been made to maintain unassisted the work for which it was set aside. Perhaps the greatest benefit rendered by the funds has been in fostering among the people a desire for good schools. Without the land grants, the burden of maintaining free schools would have seemed oppressive to the new State, but aided by the income of the funds, the people have grown into a habit of taxing themselves heavily for the support of education. Thus the funds have made practicable a system of education which without them it would have been impossible to establish. Each one of the States now raises annually for the support of schools, by taxation, an amount of money many times larger than the income of the sixteenth section funds. Undoubtedly the schools would be still stronger had they the benefit of the wasted grants; yet in no one of the States is the cause of common-school education allowed to languish, because of the follies committed in managing the trust fund. In this way have the States made some reparation, though the present and future generations pay the penalty in heavier taxation for the mistakes of their predecessors.

What has been said of the common schools cannot be maintained of the colleges and universities endowed with the "seminary townships." The cause of higher education does not lie so near to the hearts of the people as does that of primary education. The common school is within the reach of every one, while the university can be used by but a small number of the youth of the State. Every cent of taxes laid for the benefit of a college is begrudged by a large part of the commonwealth, and not infrequently the State refuses to render any assistance whatever to its own university. It is then doubly important that the best possible management be displayed in handling the "seminary" land grant. Every dollar lost to the endowment fund by carelessness, or thrown away by hasty sales, cripples the college by making it more dependent on the State. In none of the States of the Northwest Territory is the institution receiving the benefit of the land grant self-supporting. Ohio

has made little attempt to atone for the errors that despoiled her State universities of their endowment. Michigan, Indiana, and Wisconsin within the last twenty years have nobly aided their State universities by large appropriations.[1] In Wisconsin the law making a permanent appropriation specifically declares that it is in *compensation* for deficiencies arising from the disposition of the seminary lands, and the same frank acknowledgment of error might with equal justice be made by the other States.

While these appropriations have been of great service to the beneficiaries, and go far to atone for past errors; and while there is manifest a constantly increasing willingness to afford the universities all needed facilities, they are nevertheless dependent on the State for an indispensable part of their income which may be withheld at any time; whereas, had the lands been wisely managed, the income from the funds alone might have been sufficient for all their needs through all time.

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[1] In Michigan, since 1873, a permanent annual tax of $\frac{1}{20}$th of a mill on each dollar of the taxable property has been levied for the benefit of the university. Up to January 1, 1883, the total appropriations for the university amounted to $896,671.

In Wisconsin the university receives the benefit of a permanent annual tax of $\frac{1}{4}$th of a mill on each dollar of taxable property. In addition to this the university has received from the State $235,769.84.

In Indiana the university receives a permanent annual appropriation of $23,000, and has besides received various special gifts from the State.

APPENDIX.

TABLE A.—School Lands.

	Amount of the Grant.	Acres Sold.	Present Fund from Proceeds.	Average per Acre.	Present Income.	Acres Unsold.	Estimated Value of Unsold Land.
Ohio . .	704,488 acres.	664,488 (*a*)	$3,713,962.53 (*b*)	$5.58	$220,496.59	40,000 (*a*)	
Indiana . .	650,317 "	643,077	2,375,061.88	3.69	196,204.61	7,240	$95,092
Illinois . .	985,066 "	976,553	3,696,081.07	3.78	536,456.55 (*c*)	8,513 (*d*)	2,625,610
	2½ per cent. of sales of public land.		613,362.96		36,801.78		
Michigan . .	1,067,397 acres.	715,761	3,281,963.42	4.58	226,651.95	351,636	Held at $4 per acre.
Wisconsin .	1,458,649 "	1,294,110	2,429,010.30 (*e*)	1.87	190,189.56	164,539	Held at $1 and $1.25 per acre.
	5 per cent. of sales of public land.		309,035.28				

(*a*) Approximate.
(*b*) A large part of the income was for several years added to the principal, hence the fund represents more than the bare proceeds of sales.
(*c*) Includes rents of unsold lands (a large item) and income from swamp-land fund.
(*d*) Mainly in Chicago, hence their great value and high rent.
(*e*) $75,000 has been deducted as a fair estimate of the amount accruing to the fund from fines, escheats, etc. The amount since 1870 has been over $50,000.

TABLE B.—Agricultural College Grant.

	Beneficiary.	Acres in Grant.	Acres Sold.	Present Fund.	Average per Acre.	Present Income.	Acres on Hand.	Estimated Value.
Ohio . .	Ohio State Univ.	630,000 scrip	630,000	$558,529.00 (*a*)	$0.85	$31,621.73		
Indiana .	Purdue "	390,000 "	390,000	340,000.00 (*a*)	0.87	17,000.00		
Illinois .	Ill. Industrial "	480,000 " & place	455,000	319,178.87	0.70	19,010.00	25,000	
Michigan	State Agr'l College	240,000 place	105,751	367,117.24	3.47	22,629.65	134,249	$671,245.00
Wisconsin	Univ. of Wisconsin	240,000 "	220,111	279,689.84	1.27	17,910.91	19,889	24,861.25

(*a*) Increased by funding—actual proceeds of sales much less.

TABLE C.—Swamp Lands.

	Acres Claimed under the Act making the Grant.	Acres Patented to the State up to the Present Time.	Proportion of Proceeds Devoted by the State to Education.	Present Fund from Proceeds.	Disposition of Proceeds. Present Income.	Acres Unsold.
Ohio	54,458.14	25,640.71	Total net.		$6,000 distributed (*a*)	
Indiana . . .	1,354,732.50	1,252,708.21	" "	$38,077.59		
Illinois . . .	3,267,470.65	1,451,974.78	" "	$1,000,000.00 (*b*)	Included in school-fund income.	
Michigan . . .	7,373,804.72	5,659,217.14	50 per cent. cash sales.	$337,996.54	$16,713.92	
Wisconsin . .	4,200,705.85	3,071,459.61	50 per cent. of the lands.	$1,165,041.20	74,106.76	476,602 (*c*)

(*a*) Approximate. The proceeds have been distributed, hence no fund has accumulated.
(*b*) Estimated. See page 82.
(*c*) This is the amount unsold of the fifty per cent devoted to education.

TABLE D.—Saline Lands.

	Acres.	Proceeds.	Proceeds Itemized.	Income.	Object to which Proceeds were Devoted by State.
Ohio . .	24,216	$41,024.05			Schools.—No income distributed since 1845. Principal used by the State.
Indiana .	23,040	89,480.47		$5,858.26 (*a*)	Schools.
Illinois (*b*) .					
Michigan .	46,080	197,446.04	$64,000.00		Deaf and Dumb Asylum.—Proceeds themselves used.
			56,320.00		Agricultural College.— " " "
			8,000.00		Normal School Building.— " " "
			69,126.04	4,322.42	" " Endowment Fund.
Wisconsin (*b*)					

(*a*) Approximate. (*b*) Not used for educational purposes in this State.

TABLE E.—University Lands.

	Beneficiary.	Amount of Grant.	Acres Sold.	Present Fund.	Average per Acre.	Present Income.	Acres Unsold.	Estimated Value of Unsold Land.
Ohio . .	Ohio University	46,080 acres	Leased.		[$2.00]	$7,200.00		
	Miami "	23,040 "	Leased.		[4.00]	5,600.00		
Indiana .	Vincennes "	23,040 " (*a*)						
	Indiana "	69,256 "	60,730	$139,036.74	2.29		8,526 (*c*)	
Illinois .	Normal Universities	46,080 "	46,080	68,838.72	1.49	4,130.32		
		½ per cent. of sales of public land.		156,613.32		9,396.80		
Michigan	Michigan University	46,080 acres	45,792	543,317.66	11.87	38,325.33	288	Held at $12 per acre.
Wisconsin	Wisconsin "	92,160 "	89,989	228,438.83 (*b*)	3.71	14,149.52	2,171	Held at $3 per acre.

(*a*) No data accessible from which to obtain further figures.
(*b*) Add $104,339.42 used for the erection of buildings, making proceeds of sales $332,778.25. The State, by tax, makes good to the University the income on the amount thus diverted.
(*c*) This is the amount unpatented according to the books of the State, but nearly all of it has really been sold. See page 130.

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